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No. _____

IN THE
Supreme Court of the United States
October Term, 1995

CHARLES BEN HOWELL, *Petitioner*
v
OSCAR MAUZY, ET AL., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF TEXAS

PETITIONER'S APPENDIX, VOLUME 2
(Pages 43-128)

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THE SUPREME COURT OF TEXAS; Charles Ben Howell v Oscar Mauzy, et al., No. 94-1293; January 04, 1995.

[PETITIONER'S] MOTION FOR DISQUALIFICATION OR RECUSAL OF CERTAIN JUSTICES

Comes now, Charles Ben Howell, Petitioner and moves for the disqualification or recusal from this case of the Honorable Thomas R. Phillips, the Honorable Raul A. Gonzalez, the Honorable Jack Hightower, the Honorable Nathan Hecht, the Honorable Robert Gammage, the Honorable Craig Enoch, and the Honorable Rose Spector. This motion is addressed to the said Honorable Justices, both individually and collectively. In support of his motion, petitioner would show the following:

. . . . . .

This motion is based upon the affidavit of Charles Ben Howell, annexed hereto and incorporated herein by reference. Such affidavit states with particularity the grounds why each of the aforesaid justices of this court should not sit in this case. Specifically, with respect to each and every one of the aforenamed individual justices of the Supreme Court, the affidavit states facts from which it may fairly and reasonably be inferred that each of the aforenamed justices harbors a personal bias or prejudice toward this petitioner. Alternatively, the facts set forth in the annexed affidavit present the fair and reasonable inference that the impartiality of each of the above-named justices might reasonably be subject to

question. In addition, each of the said justices has a sufficient financial and/or personal interest in the outcome of this litigation to be disqualified. Based thereon, petitioner alleges that each of the aforenamed justices is disqualified to preside herein or, alternatively, each of the aforenamed justices is subject to recusal herein.

This motion is grounded upon and is made pursuant to the provisions of Rule 15a of the Texas Rules of Appellate Procedure incorporating Rule 18b of the Texas Rules of Civil Procedure. Among other applicable provisions, said rule provides in part that a judge shall recuse where his impartiality might reasonably be questioned.

This action is alternatively made pursuant to and is grounded upon the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and upon the provisions of the Constitution of the State of Texas guaranteeing Due Process of Law and Due Course of Law. In particular, petitioner relies upon those constitutional principles declaring that trial before a fair and impartial tribunal, a tribunal whose members are not only fair and impartial in fact, but fair and impartial in appearance, is a cornerstone of Due Process.

Petitioner further moves that the court apply to this case the mandatory disqualification standards enunciated by the United States Supreme Court and the Texas Supreme Court. That is to say, petitioner moves that this court hold it to be mandatory that a judge or justice withdraw from the case wherever it may fairly and reasonably be inferred that such judge or justice harbors a personal bias or prejudice toward a party or wherever the fair and

reasonable inference is presented that the impartiality of such judge or justice might reasonably be subject to question.

Insofar as the aforesaid rules purport to establish less onerous requirements for an offended party to secure recusal or disqualification grounded upon the State Constitution or less onerous requirements for an offended party to secure recusal or disqualification grounded upon the Constitution of the United States, said Rules are unconstitutional as repugnant to the Due Process and Equal Protection Clauses of the United States Constitution. If such be necessary, petitioner challenges the said rules on the grounds of invidious discrimination.

Petitioner moves and directs the Clerk of the Supreme Court to present this motion to each of the above named justices ten days after the filing hereof so that each such justice may decide either to voluntary disqualify or recuse or to certify the matter to the entire court.

Should any of the justices named herein decline to withdraw from the case, petitioner moves and requests that each said Honorable Justice so declining prepare and file with the court, prior to en banc hearing hereon, a statement in writing responding to and answering the fact allegations contained in this motion and in petitioner's affidavit. This request may be satisfied through a short statement to the effect that the facts stated by petitioner with respect to the statement-maker is substantially correct. Any error or omission by petitioner should, of course, be pointed out.

Petitioner waives any requirement that statements by the individual justices be verified. If the said Honorable Justices or any of them should either decline to prepare a statement or if the statement should be manifestly insufficient, then the court when it convenes itself en banc should consider the allegations and conclusions of this petitioner herein contained to be fully established and petitioner so moves.

Copies of this motion are being served on all other parties or their counsel of record as shown by the certificate hereto and said parties and their counsel are hereby provided with notice that movant expects this motion to be presented to each of the justices mentioned herein ten days after the filing of this motion unless otherwise ordered by any justice aforenamed or by the court. Any other party may file with the clerk of the court an opposing or concurring statement at any time before the motion is decided.

Wherefore, PREMISES CONSIDERED, petitioner asks relief as follows:

(1) That the above named Chief Justice and Justices, Gonzalez, Hightower, Hecht, Gammage, Enoch, and Spector and each of them proceed to voluntarily disqualify, recuse or withdraw herefrom or that they respectively certify their individual willingness to do so to the court en banc;

(2) That should they or any of them decline to disqualify (recuse), then that each said justice so declining proceed to file with the court a written statement re-

sponding to the factual allegations of this verified motion;

(3) That this motion be heard en banc deciding the recusal of each justice, one at a time, so that the particular justice being considered each time shall not sit en banc to consider the motion as it directly affects him;

(4) That each of the aforesaid Honorable Justices be recused or disqualified from further service herein;

(5) That the fact of disqualification or recusal be certified to the Governor of the State together with a request that he immediately commission the requisite number of persons, learned in the law and not possessed of the impediments or disqualifications outlined herein, for the trial and determination of this cause.

THE SUPREME COURT OF TEXAS; Charles Ben Howell v Oscar Mauzy, et al.; No. 94-1293; January 04, 1995.

[PETITIONER'S] AFFIDAVIT IN SUPPORT OF MOTION FOR DISQUALIFICATION OR RECUSAL

I am the Petitioner in the above-styled case. I have read the foregoing motion for the disqualification or recusal of the Honorable Thomas R. Phillips, the Honorable Raul A. Gonzalez, the Honorable Jack Hightower, the Honorable Nathan Hecht, the Honorable Robert Gammage, the Honorable Craig Enoch, and the Honorable Rose Spector. Each of the statements of fact made

therein is true and correct. All statements made therein are based on personal knowledge excepting only those expressly identified as being made on information and belief.

I am 69 years of age. I have been for the major part of my adult life involved in Republican politics. I have continuously been involved in Republican party affairs and have worked for, contributed to and publicly supported the candidates of the Republican party. Including the 1994 election campaign, I have been a candidate for office for the last fourteen successive elections. Every two years commencing in 1968, I have filed in the Republican primary as a candidate for judicial office. My campaigns were always contested and in most instances, I ran against a Democratic incumbent. My first six campaigns were unsuccessful. In 1980, I was first elected as a district judge in Dallas County, ousting a Democratic incumbent. In 1982, I was re-elected, defeating a Democratic challenger. In 1984, I was elected as Justice of the Court of Appeals for the 5th District defeating a well-entrenched Democratic incumbent. In 1986, 1988, 1990, 1992 and 1994, I was a candidate for various seats on the Texas Supreme Court. I am presently serving as a senior judge of the First Administrative Judicial Region.

In my campaign, I have avoided all types of false charges. I have never-the-less been a hard hitter and have levelled numerous charges against my Democratic opponents. I have come to be known as a controversial candidate; some have called me a maverick. My campaigns, particularly in recent years have become lightning rod campaigns where the entire Democratic slate and the

Democratic party organization in general have targeted me as the judicial candidate that they were most anxious to beat. Regardless of such facts, I have been elected and re-elected. Because of the foregoing, I have accumulated a large number of critics and detractors, within the Democratic party and within the liberal press.

On January 23, 1986, I formally announced, filed the official application for place on ballot and paid the filing fee as a candidate in the Republican Primary for the office of Justice of the Supreme Court, Place 1. My probable Democratic opponent at that time was the Honorable Oscar Mauzy. Prior to the filing deadline of February 3, 1986, Judge Nathan Hecht filed for the same office in the Republican Primary and I thereby became involved in a contested primary which I won and thereby became the general election opponent of respondent Oscar Mauzy. This suit was filed during the ensuing general election campaign.

After I failed to prevail at the 1986 election, I became a candidate for the Supreme Court in the 1988 election against the Honorable Raul Gonzalez. Although I made a public announcement for the Gonzalez seat on December 8, 1987, I did not immediately proceed to officially file as a candidate or pay the filing fee. Within a few days, rumors were being relayed to me by Republican friends that certain of my critics within the Republican party considered that my candidacy was too controversial and that the Honorable Barbara Culver, then a district judge at Midland, was being pressed to file against me in the Republican primary.

In order to check out these rumors, I contacted Judge Culver by telephone on at least two instances. In the first instance, I repeated the rumors that I had heard and asked her if she was planning to run against me in the Republican party for the Gonzalez seat. She confirmed that she had been approached and urged to make the race. In return, I urged to her that if she wished to be a candidate for the Supreme Court in 1988, that she should engage in a primary contest with Judge Nathan Hecht, whom I had decisively defeated in the 1986 Republican primary as opposed to running against me, the victor in that primary. Judge Hecht was then an announced candidate in the Republican primary for Place 2, the Kilgarlin seat. Judge Culver indicated to me in return that the persons pressing her to make the race would not support her in a race against Judge Hecht. She stated that she had not reached a decision on filing for the Gonzalez seat but that she would make her decision very shortly. I requested that she extend me the courtesy of advising me of her decision as soon as it was reached and she stated that she would do so. Receiving no further communication from Judge Culver, I continued to contact her. She continued to respond indecisively stating in our final conversation just a few days before the January 4, 1988 filing deadline that she was probably "out of it" unless there was "some major new development." Not convinced that Judge Culver was being entirely forthright, I continued to inquire and cause inquiry through various Republican party sources as to Judge Culver's probable intentions. I was informed that the persons who were pressing Judge Culver to run were primarily Republican friends of Justice Gonzalez, that such friends had, in fact, urged Justice Gonzalez on more than one occasion to switch to the

Republican party but that he had refused to do so. According to my information, the persons pressing Judge Culver to run against me in the Republican primary really preferred that Judge Gonzalez not be opposed by the Republican party at all. I was told that Justice Culver was merely a so-called "hatchet man" candidate who would not file in the Republican primary at all unless I filed.

As the filing deadline drew near, my sources informed me that Justice D. Camille Dunn of the First Court of Appeals at Houston was contemplating entering the Republican primary for the Kilgarlin seat making her a Republican primary contestant with Judge Nathan Hecht. I was informed that as soon as Justice Dunn made her intentions known, that the same persons as were pressing Judge Culver to run against me for the Gonzalez seat had approached Justice Dunn and urged her to switch her announced plans and to run against me for the Gonzalez seat, Justice Dunn being assured that if she targeted the Gonzalez seat instead of the Kilgarlin seat, that Judge Culver would drop out of contention.

During the fall of 1987, Chief Justice Hill had announced his intention to resign from the Supreme Court effective January 4, 1988 and the Governor had announced that he would appoint the Honorable Thomas R. Phillips, a Republican, to succeed Chief Justice Hill. Under Texas law, the vacancy was required to be placed on the ballot at the next general election, meaning the 1988 general election ballot. This meant that four seats on the Supreme Court would be on the 1988 election ballot. Under the law, the deadline to file for all four seats was Monday, January 4, 1988 at 6:00 p.m.

I arrived at State Republican Headquarters a little after 4:00 in the afternoon. I announced that I had come to file for office for a seat on the Supreme Court. I repeated the various rumors that I had heard and stated that such rumors had caused me to rethink my declared intention to run for Place 3, the Gonzalez seat. I stated that I had come to the conclusion that Judge Culver or some other person unknown to me had been recruited as a "hatchet" candidate and that such candidate was hiding in the woodwork (possibly in the hotel across the street) ready to pounce upon me as soon as I filed for the Gonzalez seat. I had already checked and had been informed that as of the time of my arrival at Republican headquarters, there was no officially filed Republican candidate for the Gonzalez seat. I declared that I had concluded that if I must be involved in a contested primary, that I had decided that I . . . would engage in a primary contest for the chief justice's seat with the Honorable Thomas R. Phillips as my primary opponent. I stated that I considered the Honorable Justice Phillips to be vulnerable because he was an advocate of appointive judges rather than elected judges, the selection of judges by appointment being, in my opinion, not popular with the voting public in Texas. I further declared that I considered Chief Justice Phillips to be vulnerable on the issues of maturity and experience.

Chief Justice Phillips had taken the oath of office as an appointee earlier in the day and had also officially filed in the Republican primary to succeed himself. He was immediately informed of my announced decision to enter the Republican primary as a candidate for chief justice, the person calling him probably being Mr. John Weaver. Chief Justice Phillips dispatched a campaign

lieutenant, a Mr. Carl Jordan to Republican headquarters to act on his behalf. Various discussions ensued between me, my aides, Mr. Jordan and party officials. A concerted attempt was made to convince me not to run for chief justice. I remained adamant. Finally within mere minutes of the 6:00 P.M. o'clock deadline, I received assurances from all persons present that Judge Culver would not be a candidate for any place on the Supreme Court, that Justice Dunn would be a candidate for the Kilgarlin seat and that there was no other Republican candidate, either actual or potential for the Gonzalez seat. As soon as I decided that the assurances to me were accurate, I delivered to the state chairman my official application for place on the ballot plus the proper filing fee. My filing was completed not later than ten minutes prior to the filing deadline of 6:00 o'clock p.m. on January 4, 1988. I thereby became a candidate, unopposed in the Republican primary, for Place 3, the Gonzalez seat on the Texas Supreme Court.

My rivalry with the Honorable Chief Justice did not commence with the 1988 election. On information and belief, he is a long time friend and confidant of the Honorable Nathan Hecht. Even though it is a strong principle among Republicans (commonly referred to as the "Eleventh Commandment") that no candidate or office holder will become involved in a contested primary election other than his own, Chief Justice Phillips never-the-less gave $100.00 to the 1986 Nathan Hecht primary campaign, knowing at the time that Judge Hecht was being actively contested at the 1986 Republican primary by the affiant, Charles Ben Howell. In all of my political experience, I can only recall one other instance where a

Republican officeholder has given money to my opponent in a contested Republican primary. In all likelihood, Chief Justice Phillips further assisted Judge Hecht in raising substantial other contributions and support so that he, Judge Hecht might run against me in the 1986 Republican primary. The Chief Justice is from Houston whereas Judge Hecht is from Dallas. The Chief Justice was of great assistance to Judge Hecht in the Houston area in 1986.

Inasmuch as he was a friend and confidant and booster and contributor of Judge Hecht at the 1986 election, it may be logically concluded that, in all likelihood, Chief Justice Phillips was greatly incensed over the fact that I brought suit against Judge Hecht over his defamatory tactics. On information and belief, The Honorable Thomas R. Phillips was active in the 1986 primary election campaign between myself and Justice Hecht and in which I decisively defeated Justice Hecht in spite of his false attacks that culminated in a libel suit. . . . As a partisan for Justice Hecht, the Honorable Thomas R. Phillips cannot be fair and impartial in an action where I am a party.

During the 1986 Republican Primary election, Justice Hecht deliberately persisted in circulating numerous false statements about me, including contentions that I had been almost disbarred twice, and that I had been found guilty of making false statements to a judge in a divorce case. He refused to desist or retract even though requested to do. I therefore brought suit against him for libel during April, 1986, in the 14th District Court of Dallas County, Texas, cause no. 86-05369. . . . Chief Justice

Phillips was greatly incensed over the fact that I brought suit against Judge Hecht.

Following my moves to become his political opponent in 1988, the Honorable Justice Phillips exhibited the fact that he had formed a bias and prejudice against me, affiant Howell and manifested that he had determined that he, the said Chief Justice Phillips, did not care to have this petitioner, Charles Ben Howell, as a colleague with him on the Supreme Court. To this end, the said Chief Justice undertook to stir up adverse publicity against petitioner for the motive and purpose of causing petitioner's defeat as a candidate for the Supreme Court.

With the aforesaid objective in mind, the Honorable Chief Justice, on or about March 28, 1988, contacted the staff of Texas Weekly, a publication circulating throughout the State of Texas which concentrates upon distributing news items concerning public officials and political events. Pursuant to his own request, the said Chief Justice was interviewed by one or more members of the staff of the said Texas Weekly.

As the principal topic of the interview, the said Honorable Chief Justice stated that no one should count upon him to engage in "chatting up" the entire Republican reform slate of Supreme Court candidates. Chief Justice Phillips stated as a generality that he would decline to endorse any of his party colleagues. However, he went on to further and pointedly declare that he would not be any part of encouraging a vote for Charles Ben Howell. In order to further and specifically disparage the candidacy of petitioner, the Honorable Chief Justice stated by way

of example that if, at the State Republican Convention he were lined up for a joint photograph with other Supreme Court candidates, "that would not be an endorsement" of the candidacy of this petitioner, Charles Ben Howell. The Honorable Chief Justice further commented that the Republican Party might well mount a slate campaign for Republican Supreme Court candidates but he predicted that petitioner Howell would not be included in any part of such group effort. The Honorable Chief Justice further stated that petitioner Howell is regarded as too much of a maverick for the party organization to support petitioner's candidacy. The Chief Justice concluded by declaring that Governor Clements may be the only Republican state official to support petitioner's candidacy.

As the Honorable Chief Justice was well aware, there were five Republican candidates for the Supreme Court besides himself. In his said interview, the Honorable Chief Justice omitted to mention any of them by name except petitioner Howell. Instead, he continuously repeated the name of this petitioner so as to convey the message that he was avoiding endorsements or slate campaigning for the principal reason, if not the sole reason, of avoiding any association whatever with this petitioner.

In his interview, the said Honorable Chief Justice further undertook to convey the impression that petitioner is a pariah or outcast of the Republican Party, that Republican officials are opposed to petitioner's candidacy and that Republican voters should avoid voting for or otherwise supporting petitioner's candidacy.

Because of the aforesaid rivalries and controver-

sies between this affiant and the Honorable Thomas R. Phillips and the Honorable Nathan Hecht, and because those differences, controversies and political conflicts continue to this date, affiant submits that it would be improper for either of them to sit in judgment upon the within application for writ of error filed by this affiant. To the extent required by law, affiant states under oath that the said Honorable Thomas R. Phillips and/or the said Honorable Nathan Hecht should each or both recuse themselves in this proceedings and that their impartiality might reasonably be questioned in that they have a personal bias or prejudice concerning this affiant, Charles Ben Howell, a party hereto or the subject matter of the within lawsuit.

Each of the Democratic justices of the Supreme Court, named above and of whom recusal is hereby sought, to-wit. Justices Gonzalez, Hightower, Gammage and Spector is, each of them, a political ally of the Honorable Oscar Mauzy in that each of them has been, for the major part of his adult lifetime, actively involved in Democratic politics. They have each continuously been active in Democratic Party affairs and have worked for and have contributed and have publicly supported the candidates of the Democratic Party. They have numerously been candidates for office at the Democratic primary. They have served as Democratic officeholders in various capacities and they presently serve as Democratic officeholders and were, each of them, elected to the Supreme Court as a Democrat or were, each of them, appointed to the Supreme Court by a Democratic governor or were both elected and appointed as a Democrat. Those of them who achieved office by appointment ac-

tively sought to secure appointment from a Democratic governor. All such appointments were in part given to the recipients in recognition of previous activities in behalf of the Democratic Party and its candidates and upon the endorsement and support of persons active in Democratic politics. The aforesaid . . . justices had further sought office on numerous occasions by filing for the nomination of the Democratic Party in its primary and in campaigning for and securing such nomination and in representing the Democratic Party thereafter as one of its candidates at the general election.

Not only is politics intrinsic to this lawsuit, but a close personal relationship is also believed to exist between the respondent, Justice Mauzy and Justices Phillips, Gonzalez, Hightower, Hecht and Gammage, addressed herein. Each said member has had a close working relationship with respondent Mauzy, meeting and visiting with him as a colleague almost daily for all or part of his six year term. Respondent continues to live in Austin and "drops in" at the Supreme Court Building regularly. Such relationship and the inevitable social contacts inherent therein create an atmosphere which is not conducive to detachment or to fair and impartial decision making.

The close political and working arrangement between the justices is illustrated by the relationship between Justice Mauzy and Justice Gammage. Justice Mauzy served for eighteen years in the Texas Senate during which time he became the acknowledged leader of the liberal wing of the Democratic majority. Justice Gammage served in the Legislature with him and was one of his chief confidants. This affiant cannot obtain a fair and

impartial hearing before the Honorable Justice Gammage in an action challenging the political conduct of respondent Mauzy.

The within lawsuit is a political lawsuit in that it grew out of the election campaign between affiant and Justice Mauzy. Affiant charges Justice Mauzy with engaging in a wilful and deliberate money laundering scheme during his campaign for office in an effort to hide the fact that he had obtained a $225,000 bank loan to finance his campaign. Affiant further charges that defendant Mauzy diverted a substantial amount of political contributions to his personal use, and charges him with various other violations of the campaign disclosure act. In addition to the substantial amount of the statutory double damages and attorneys fees in issue, the loser will sustain extensive negative publicity and political damage. Defendant's colleagues, particularly his Democratic colleagues, will possess no natural sympathy for petitioner. On the contrary, the members of this Court will feel considerable natural sympathy for defendant Mauzy.

Each member of this court, particularly the Democratic members, is, in all likelihood, aware of the facts of the underlying lawsuit by reason of having visited with Judge Mauzy about the case on one or more occasions. Such ex parte conversations are disqualifying in and of themselves. In addition, Justice Mauzy has disparaged petitioner to his colleagues from time to time falsely contending that petitioner has filed suits against all of his opponents and that every lawsuit filed by petitioner against a political opponent has been baseless and frivolous.

The Honorable Raul Gonzalez is further and particularly disqualified to participate in this case on account of the mutual rancor and bitterness of the 1988 political campaign between petitioner and Justice Gonzalez. Justice Gonzalez spent the months of July, through October touring the State. He repeatedly made false and distorted charges against petitioner. In particular, he repeatedly declared to his audiences and to the attending media that petitioner is a "Kook."

The major media event of the campaign was a judicial forum conducted on the campus of the University of Houston on October 13 and televised both directly and on tape across the state through various broadcast and cable systems. Justice Gonzalez proceeded to declare on television that this petitioner is a "Kook."

Affiant was prepared for the onslaught. I removed two signs from my briefcase. One sign, I placed around my own neck identifying myself as "Judge Kook." The other sign lettered to read "Judge $1,514,710" I offered to Justice Gonzalez to represent the amount of contributions that Justice Gonzalez had received from special interest groups and others. He refused to accept the placard and complained bitterly to the attending media representatives that my campaign tactics were unfair. The University of Houston judicial forum became a focal point during the remainder of the campaign.

The Honorable Chief Justice also became indignant and upset by the "Judge Kook" incident at the judicial forum. He was interviewed by media immediately after the program and before leaving the premises. He

declared that my reaction to Justice Gonzalez' invective was totally uncalled for. Strangely, he had no criticism whatever for Justice Gonzalez' invective against me. I didn't conjure up the name for myself; never at any time during the campaign did I ever apply any epithets to my opponent. Chief Justice Phillips made a point of declaring that he was no part of my campaign declaring "This is a good example of why I'm pleased that I'm just running my own race" . . . .

The campaign continued to deteriorate. Justice Gonzalez' campaign tactics became ever more shrill. Finally, he began running television ads picturing me as a jailbird. The ad was based on a contempt of court citation relating back seventeen years. Of course, the age of the charge and the particulars thereof were not mentioned. I finally concluded that his tactics were utterly in violation of the rules and statutes regulating the conduct of judicial elections. On November 2, 1988, I filed a complaint against my opponent with the Commission on Judicial Conduct.

The Commission, composed of eight Democrats (including the chairman) and three Republicans refused to conduct an emergency hearing as I requested. Instead, they held the matter until their next regular meeting on December 2 when they voted to dismiss. At no time did the Commission ask me to appear or to submit my documentation. I have information to the effect that the complaint was also dismissed without inquiry to Justice Gonzalez as to his response, if any to the cliams filed against him.

The attitude of the Honorable Raul Gonzalez toward me is exemplified by his comments to the media. On the day after the election, when advised that he had received 53.9 percent of the vote, he declared "Given the opposition, I would've expected to have done better." Following the announcement of the Commission decision, he declared to the Associated Press on December 21 "It's unfortunate that we have people like Charles Ben Howell who don't know when to quit."

Petitioner would show that each justice of this Court has a direct pecuniary interest in ruling against petitioner in the within litigation. I have declared and run for office as a justice of the Supreme Court against five of the justices under challenge. In the aggregate, they have spent over $1,000,000 in opposing my candidacy. The cost of campaigning for a seat on the Texas Supreme Court is extremely high, running between $500,000 and $2,000,000 for successful campaigns. Based on past performance, said justices can each of them anticipate the very real prospect that petitioner will be a candidate for the Supreme Court again in the future. Anything that any of them can do to stir up adverse publicity against petitioner will constitute employment security for the incumbent members of the Court. This statement is applicable to Democrats and Republicans alike.

Petitioner would further show that each justice herein is acting in his own case to the extent that any precedent adverse to petitioner will be helpful in defending the positions of the respective incumbent justices at subsequent elections.

For each reason stated herein, this petitioner, Charles Ben Howell, makes affidavit that the Honorable Thomas R. Phillips is disqualified or should recuse himself from participation herein. The said justice is possessed of a personal bias or prejudice against this petitioner concerning this party and/or the subject matter of this case. Alternatively, the said Honorable Justice possesses the appearance of bias or prejudice against the petitioner. In further alternative, affiant states that the impartiality of said Honorable Justice might reasonably be questioned.

For each reason stated herein, this affiant, Charles Ben Howell, makes affidavit that the Honorable Raul Gonzalez is disqualified or should recuse himself from participation herein. The said justice is possessed of a personal bias or prejudice against this petitioner concerning this party and or the subject matter of this case. Alternatively, the said Honorable Justice possesses the appearance of bias or prejudice against this petitioner. In further alternative, affiant states that the impartiality of said Honorable Justice might reasonably be questioned.

For each reason stated herein, this petitioner, Charles Ben Howell, makes affidavit that the Honorable Jack Hightower is disqualified or should recuse himself from participation herein. The said justice is possessed of a personal bias or prejudice against this petitioner concerning this party and/or the subject matter of this case. Alternatively, the said Honorable Justice possesses the appearance of bias or prejudice against this petitioner. In further alternative, affiant states that the impartiality of said Honorable Justice might reasonably be questioned.

For each reason stated herein, this petitioner, Charles Ben Howell, makes affidavit that the Honorable Nathan Hecht is disqualified or should recuse himself from participation herein. The said justice is possessed of a personal bias or prejudice against this petitioner concerning this party and/or the subject matter of this case. Alternatively, the said Honorable Justice possesses the appearance of bias or prejudice against this petitioner. In further alternative, affiant states that the impartiality of said Honorable Justice might reasonably be questioned.

For each reason stated herein, this petitioner, Charles Ben Howell, makes affidavit that the Honorable Robert Gammage is disqualified or should recuse himself from participation herein. The said justice is possessed of a personal bias or prejudice against this petitioner concerning this party and/or the subject matter of this case. Alternatively, the said Honorable Justice possesses the appearance of bias or prejudice against this petitioner. In further alternative, affiant states that the impartiality of said Honorable Justice might reasonably be questioned.

For each reason stated herein, this petitioner, Charles Ben Howell, makes affidavit that the Honorable Craig Enoch is disqualified or should recuse himself from participation herein. The said justice is possessed of a personal bias or prejudice against this petitioner concerning this party and/or the subject matter of this case. Alternatively, the said Honorable Justice possesses the appearance of bias or prejudice against this petitioner. In further alternative, affiant states that the impartiality of said Honorable Justice might reasonably be questioned.

For each reason stated herein, this petitioner, Charles Ben Howell, makes affidavit that the Honorable Rose Spector is disqualified or should recuse . . . from participation herein. The said justice is possessed of a personal bias or prejudice against this petitioner concerning this party and/or the subject matter of this case. Alternatively, the said Honorable Justice possesses the appearance of bias or prejudice against this petitioner. In further alternative, affiant states that the impartiality of said Honorable Justice might reasonably be questioned.

THE SUPREME COURT OF TEXAS, CHARLES BEN HOWELL v OSCAR MAUZY, et al., No. 94-1293; January 13, 1995

[PETITIONER'S] SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF [PETITIONER'S] MOTION FOR DISQUALIFICATION OR RECUSAL OF CERTAIN JUSTICES

Summary of Facts Requiring Disqualification or Recusal

As shown in greater detail below, and in documents herein incorporated by reference, each justice of the Supreme Court now being addressed is disqualified or subject to mandatory recusation for the following reasons:

(1) *Political Opponents:* In the course of four suc-

cessive elections, I have been a declared political opponent of five out of nine incumbent members of the Supreme Court. Four of those five declarations resulted in formal candidacies. Each such candidacy involved charges, counter charges, activities and alignments, on the part of this affiant, the opposing justice, and those aligned therewith, the natural and probable result of which was to produce antipathy and antagonism toward this petitioner. Petitioner should not be required to present his case to his political opponents, their impartiality being reasonably subject to question.

(2) *Litigation Opponents:* Since 1988 I have been involved in contested litigation inclusive of proceedings before the Judicial Conduct Commission with four members of the Texas Supreme Court. Petitioner should not be required to present his case to his litigation opponents for decision, their impartiality being reasonably subject to question.

(3) *Similar Unlawful Actions:* Every Justice of this Court must, under the law, fill out reports under the Campaign Disclosure Act the same or similar to the reports here being litigated. Each said justice has an interest in interpreting the Campaign Disclosure Act in a manner that will cause said justice the least time and effort and the least exposure to potential liability for the double damage penalties provided by the Act. The Court below has ruled in favor of strict construction and in petitioner's view, applied interpretations that are not only strict but strained. Each of those interpretations will be beneficial to the Justices here being addressed if any of their reports are ever questioned. Said justices are being

asked by the within writ application to create possibly adverse precedent against themselves. Under such circumstances, it is difficult, if not impossible for said justices to act impartially.

A. Petitioner contends that respondent is liable for damages and injunctive relief because he failed to list the true provider of the services and materials used by his campaign, but instead listed credit card companies or himself or other nondescript payees and failed to itemize his expenditures in accordance with the law. Each justice of this Court who has filed or caused the filing of CDA reports in a similar manner is particularly disqualified or subject to recusation.

B. Petitioner contends that respondent is liable for damages and injunctive relief because he caused the payment out of political contribution funds of the cost of moving his household goods from Dallas to Austin. Each justice of this Court who has engaged in similar conduct, or who has utilized political funds to pay for housing or moving expenses or for personal travel not mandatory to the duties of office or while actively campaigning, including travel for educational purposes, is particularly disqualified or subject to recusation.

C. The Court below has held that any candidate who utilizes personal funds to pay campaign expenses has no obligation to report any such payment as long as the candidate is concurrently discharging a personal debt. Each justice who has in the past or who might in the future, in reasonable probability, incur personal liability for campaign expenditures and thereafter discharge that debt with personal funds is particularly dis-

qualified or subject to recusation.

D. Petitioner has alleged that respondent engaged in a money laundering scheme through the use of "Pet PACs" (political committees, including one-person committees operated by persons closely affiliated with the candidate, or political committees over which the candidate, through various means, exercises extensive control). Respondent has defended on the claim that a report by a "pet PAC" discharges the candidate's reporting obligation, a proposition which petitioner denies. Each justice who has in the past or who might in the future, in reasonable probability, utilize "Pet PACs" in a campaign is particularly disqualified or subject to recusation.

(4) *Continuous Criticism:* During the past five calendar years, and as a part of my campaigns for judicial office, I have directed numerous sharp but fair criticisms against the entire membership of the Texas Supreme Court now being addressed. Such criticisms, although made in good faith, were such that each member of the Court could easily have taken umbrage and could have developed an antagonism toward this petitioner.

(5) *Display of Animus Toward Petitioner:* During the past five calendar years, justices of this court have made public remarks concerning this petitioner, his personality, his supposed litigiousness, and his qualifications to hold office such as to indicate that they harbor animus toward petitioner. They are thus disqualified (subject to recusation) on account of personal bias or prejudice concerning this petitioner.

(6) *Petitioner's Case Is Being Tried Before His Com-*

petitors: During each of the past 5 elections, petitioner has been a candidate for the Supreme Court. Five times, I have had a declared Republican primary opponent. Three times, I have had a Democratic opponent at the general election. Before that, I ran nine other judicial races—the Supreme Court is the only level where I have not served. The anticipation on the part of each member of this Court is strong that I, petitioner will again be a candidate for a seat on Texas' highest court. Neither have I, petitioner exhibited any reticence to challenge incumbents. Every justice of the Supreme Court has reason to regard petitioner as a potential political opponent and a competitor for his or her job. It thus serves the personal interest of each justice of this court to continue to label suits by petitioner against members of this Supreme Court as baseless and frivolous and thereby belittle and demean petitioner as a potential political opponent seeking to take jobs away from them. Thus, each of them has a financial interest in seeing respondent prevail in this case.

(7) *Acting as a Member of the Opposing Team: Display of Favoritism Toward Respondent:* At least one member of the Supreme Court, the Chief Justice, has been a political mentor of petitioner's 1994 opponent, Justice Hecht, providing him with a contribution of $100.00 and otherwise assisting him in his race against me.

(8) *Propinquity with Respondent:* Five of the Justices whose removal from the case is being sought have met and dealt with respondent on an almost daily basis during his six year term. Four of the seven are political allies, being members of the Democratic Party. The laws of human nature create within every individual the pro-

pensity to be much more friendly and sympathetic toward a person in the position of respondent when that person is engaged in a contest with a person with whom they have no personal relationship, such as this petitioner. The fact that petitioner is suing a member of the very group which will decide the case creates a situation where the appearance of impartiality is absent.

(9) *The Total Picture Bespeaks a Lack of Impartiality in Appearance, if Not in Fact:* If some one or more of the above recited factors is insufficient to create a case for disqualification or recusal, the cumulative effect thereof creates a clear case for disqualification (recusal).

FACTS REQUIRING DISQUALIFICATION OR REMOVAL

Three seats on the Supreme Court were up for election in 1990. I was a candidate for one of those seats; my Democratic general election opponent was Justice Gammage. Chief Justice Phillips was a candidate to succeed himself. We both won nomination at the Republican primary. The third Republican nominee was now-Justice John Cornyn, who was then a district judge in San Antonio. Between the time that the three of us were nominated in the Republican primary and the time of the general election, we each received a large number of invitations to various political meetings and functions. Justice Cornyn was at all times reasonably cordial and polite toward me. However, on the numerous occasions (perhaps as many as twenty) where we were both invited to appear on the same platform and did so appear, Chief Justice Phillips was rude, arrogant and haughty toward me. Wherever

possible, he avoided me, turned his back to me, refused to shake my hand and refused to exchange greetings with me. His disdain and dislike for this affiant, Charles Ben Howell was easily apparent to all careful observers in attendance.

Our most obvious confrontation was at the Republican State Convention in June. The program director advised all candidates who had been invited to address the convention that early on the second day, they could rehearse their remarks in the convention hall with the hall's sound system in operation. I inquired if the candidates would be taken in any particular order and was advised "first come, first served." I therefore made it a point to arrive early and was in the hall by 8:10 AM while the electronic maintenance personnel were still turning on and balancing out the sound system. I took a seat and waited; within a few short minutes, the program director approached me, acknowledged that I was first in line and requested that I allow our gubernatorial candidate to go first because he had many commitments. I agreed and took a seat at the foot of the steps below the left end of the stage along with other candidates and their staff personnel, and various convention personnel who had begun to assemble. After the gubernatorial candidate concluded, Chief Justice Phillips dashed up the steps at the opposite end of the stage and preempted the rostrum. I retired to the bottom of the steps on my side rather than make an issue of the fact that he had violated the "first come, first served" rule. As he concluded, I again mounted the stage. As I reached the rostrum, Chief Justice Phillips, with Judge Cornyn at his side, came back to the rostrum declaring "Judge Howell, I am going to let Judge Cornyn go

next." Having been forced to wait over an hour, I was somewhat exasperated and I declared: "Judge Phillips, this is not your courtroom, this is a convention hall. The rule of proceeding is 'first come, first served.' I was the first person in this convention hall and I don't intend to budge." The Chief Justice advanced toward me as if to pursue the argument but Judge Cornyn immediately declared "I don't mind waiting" and started to walk away. Chief Justice Phillips reluctantly followed him. I thereafter learned that the sound system had picked up this exchange and carried it throughout the hall where many candidates, staff personnel, convention officers, and Republican officials were assembled; they all heard this exchange. The Chief Justice was obviously upset by this confrontation and was no doubt quite antagonized on learning that it had been broadcast throughout the convention hall. I believe and have reason to believe that on account of the totality of the relations between petitioner and Chief Justice Phillips, that the Chief Justice is possessed of a bias or prejudice concerning this affiant, a party to this action. In addition, the circumstances and relations are such that his impartiality might reasonably be questioned.

In 1988 Justice Gonzalez purchased advertising on at least 30 television stations throughout the state in order to portray me, as a jailbird. His advertising was false in that it was deliberately crafted to create the impression that he was reciting events of recent date whereas the matters adverted to had 17 year old roots. Further, I was never held in jail in the manner implied. He used the exact same tape repeating his message six or more times on each channel, a total of at least 180 times, all within the

last ten days prior to the election. His verified campaign expense reports on file with the Secretary of State reflect a cost of about $200,000 for this television barrage alone. Based on over 20 years of political experience, I can state with assurance that there can be no doubt that such a pervasive onslaught of negative campaigning, coming too late in the campaign season for effective response, both can and did have a profound effect on the outcome of the election.

The manner in which Justice Gonzalez's campaign violated the defamation laws and the canons of judicial ethics is spelled out in my complaint to the Judicial Conduct Commission which is contained in the verified exhibits. The fact that the Commission dismissed the complaint is meaningless. They dismissed without investigation which amounts, in effect, to the sustainer of a general demurrer. Comparable to a criminal prosecution, when the grand jury refuses to indict, the complainant has no means to seek judicial review of that action. However, the complainant is free to pursue his civil remedies free from any adverse inference that might arguably arise from a no-bill. In fact, comparable to a criminal complaint, the dismissal or no-bill does not even preclude prosecution at a later date should a subsequent court decision reflect that the prosecutorial body misinterpreted the facts and/or the legal principles embodied in the complaint.

Justice Gammage used Justice Gonzalez's seemingly successful 1988 negative television advertising tactics as the basis for his 1990 campaign against petitioner except that Justice Gammage embellished thereon greatly. He made a single tape containing a total negative ad

which omitted any reference whatever to himself except for the legal disclaimer printed on the foot of the screen in an unreadable manner. As reflected by the transcript contained in the verified exhibits, he likewise omitted all reference to the date of the events being described thus creating the impression of recent date. He falsely implied that petitioner had been housed in jail along with common criminals. He distorted on the truth in numerous other respects. I compiled a large file logging time, place and date where his advertising was run, insofar as known to me. Undoubtedly, there were many other runs that I was unable to catch. My count shows that he made approximately 420 runs on about 34 different stations in all parts of Texas at a cost, according to station rate cards assembled by me, and as confirmed by inspecting his verified reports to the Secretary of State, exceeding $250,000. He began running Thursday, ten days before the election and concluded on Monday, the day previous to the election, running on Monday night football on channel 8 in Dallas at a rate card cost for that one broadcast on a single station of $9,500. Again, the effect on my campaign was profound.

Like most candidates, I always read the verified reports filed with the Secretary of State by my opponent. I observed that Justice Gammage was paying the sum of $4,000 per month to one Linda Hallmark as a campaign staff worker, paying her approximately $36,000 by election day. About two weeks prior to the election, I discovered that Linda Hallmark was, in fact, Justice Gammage's wife, sharing his bed and board at all material times. In good faith, I attacked Justice Gammage through the media for violating the spirit, if not the letter of the "pocket-

ing" provision of the Election Code prohibiting a candidate or office-holder from diverting political contributions to personal use. Justice Gammage, as I am informed, became extremely incensed by my action of supposedly "dragging his wife into the mud." My position was and is that I made the remarks in good faith after careful investigation and if Mrs. Gammage was in the "mud," it was Mr. Gammage, not this affiant who put her there. Justice Gammage is particularly disqualified by reason of the fact that plaintiff makes pocketing allegations against respondent Oscar Mauzy. Inasmuch as I have made pocketing allegations against Justice Gammage, his natural sympathies will be with respondent.

My campaign criticisms of Justice Gammage were fair and factual but hard-hitting. Nevertheless, they caused him to declare that he was "offended" by my campaign statements. I believe and have reason to believe that on account of the totality of the relations between petitioner and Justice Gammage, that Justice Gammage is possessed of a bias or prejudice concerning this affiant, a party to this action. In addition, the circumstances and relations are such that his impartiality might reasonably be questioned.

Before coming to the Supreme Court, Justice Enoch previously served as Chief Justice of the Court of Appeals for the Fifth District where I also served. We served together for about four years. Under the law, the said Dallas court was the only court with appellate jurisdiction over my libel case against Justice Hecht and my appeal of that case was docketed in the Fifth Court. Chief Justice Enoch promptly wrote a letter to the Supreme

Court asking that the case be transferred to another Court of Appeals. He provided me with a copy of his letter. Two or three months elapsed and I had heard nothing further. One day, I stepped into Justice Enoch's office and asked him if he had heard from the Supreme Court regarding transfer of my suit against Justice Hecht. Justice Enoch replied: "No, but I will contact them again. I want to get rid of it just as much as you do. I don't know why you waste your time with suits against Nathan Hecht and Oscar Mauzy. You won't get a thing out of them, ever. However, I will be glad to accommodate you in getting the Hecht case out of this court."

By and through his said remarks, Justice Enoch has indicated a pre-judgment of the present writ application which disqualifies him or makes him subject to mandatory recusal.

Thereafter, during the spring of 1992, I was an opponent of the Honorable Craig Enoch in the Republican primary phase of the election for a seat on the Supreme Court. Justice Enoch mounted a negative advertising campaign against me very similar to the campaigns of Justices Gonzalez and Gammage. A transcript of his TV ad is in the verified exhibits. I was saddened by the fact that one Republican candidate would be as vicious against me as Justice Enoch was. His political advertising, according to my investigations, ran on approximately 40 TV stations statewide, a total of over 300 spots.

During the summer of 1992, after Justice Enoch had won the primary, he was accused of forcing an employee of the Court of Appeals to work on his Supreme

Court campaign during her regular working hours. According to the lady's allegations, the work was mostly done during the primary phase of the election campaign. I proceeded to file suit against Justice Enoch under the Campaign Disclosure Act for failing to report an in-kind contribution of the lady's services. I subsequently nonsuited in order to allow other litigation and investigations to proceed first. I notice from the newspapers that the lady's claims against Justice Enoch have been concluded through the payment of a $25,000 settlement. Justice Enoch is disqualified or subject to mandatory recusal because of my undisposed litigation against him. Limitations has not passed. He has reason to apprehend that I may refile my lawsuit and I am likely to do so.

During the spring of 1994, I was a candidate in the Republican primary against Justice Hecht. He hired the same political consultant who had worked for Justice Enoch and ran the same type of distorted negative TV advertising program that Justice Enoch had run against me. I do not have a copy of the advertising, but I did see it on Dallas TV stations. It made the same spurious twenty year old charges against me that were made by my previous opponents.

The viciousness of Justice Hecht's TV necessitated that I file a complaint against Justice Hecht with the Judicial Conduct Commission. The Commission had not yet issued a decision at the time the within writ application was filed. Immediately upon the filing of the complaint, Justice Hecht issued a press release personally attacking me. A copy of this release was given to me by John Gonzales, an employee of the Austin bureau of the For Worth Star Telegram.

Because of personal attacks and aspersions against me and the continuous nature thereof, Justice Hecht has demonstrated bias and prejudice against me disqualifying him or making him subject to mandatory recusal.

As shown by the transcript, the briefs, and the opinion of the Court of Appeals, plaintiff sues for statutory double damages, injunction and attorneys' fees alleging that defendant Oscar Mauzy, during his campaign for election to the bench of the Supreme Court, failed to comply with the Campaign Disclosure Act. Among the reasons that the aforenamed justices are disqualified, or are alternatively subject to mandatory recusal, is that one or more of the aforenamed justices have themselves filed reports under the Campaign Disclosure Act that reflect certain of the same acts and omissions that this plaintiff has charged against defendant.

A justice of this Court who has engaged in any of the same acts or omissions as have been alleged against defendant could not rule in plaintiff's favor upon the allegations against defendant without making an inferential admission that he, the said justice, has himself failed to comply with the Campaign Disclosure Act. For such reason, the said justice is disqualified or subject to mandatory recusal. In particular, the impartiality of the said justice might reasonably be questioned, the said justice is possessed of a personal bias or prejudice concerning the subject matter of this action, and his personal knowledge of an arguable expert opinion with respect to disputed evidentiary facts concerning this proceeding.

In addition, any justice so situated, in ruling in

favor of defendant could, in all likelihood, be acting to insulate himself from liability under the Campaign Disclosure Act for injunctive relief, civil damages, criminal sanctions, attorney's fees and costs. Any justice so situated possesses a direct financial interest in the outcome of this case thereby causing him to be disqualified or subject to mandatory recusal.

Also, any justice so situated, in ruling in favor of defendant would be, in effect, acting in his own case thereby causing him to be disqualified or subject to mandatory recusal even if limitations have passed. Each said justice has manifested a pre-judgment of the case. By acting in a similar manner, each said justice has strongly indicated an opinion that such conduct is lawful. The human tendency to self-justification will be a strong pull to each said justice to maintain his said adverse opinion. In addition, each justice of this Court is an elective official. There is no statute of limitations upon charges of unlawful conduct that might be leveled by one's political opponent. Witness the propensity of the Justices who have opposed petitioner at the ballot box to campaign against petitioner on the basis of twenty-year old events.

In the cause of action now before the Supreme Court, plaintiff asserts that defendant Mauzy has violated the Campaign Disclosure Act by reporting the disbursement of campaign contributions to credit card companies without giving the name of the true provider of the goods or services in question, and/or without giving the date that the expenditure was incurred, and/or without stating the nature of the goods or services provided.

The Honorable Raul A. Gonzalez has engaged in the same alleged acts or omissions as defendant by filing campaign disclosure reports with the Secretary of State listing credit card transactions in the following manner:

Date Listed	Payee	Purpose	Amount
[1984] 12-7	American Express	Hotel Exp. to attend Texas Trial Lawyers mtg. Houston	$100.15
02/10/86	Republic Bank Card	Campaign exp. per Jan. Stmt.	348.88
03/26/86	Republicbank Card	Travel & Related Expenses as per April Stmt.	3284.12
04/16/86	Republic Bankcard	Mastercard Bill Jan.-Feb.	987.07
05/05/86	Republic Bankcard	Expenses (Mastercard)	2947.35
05/30/86	Republic Bankcard	May bill	2956.70
06/25/86	Republic Bankcard	Bill for 05/20/86-06/17/86	1490.68
08/21/86	Republic Bankcard	Mastercard bill	1014.83
09/10/86	Republic Bankcard	August Expenses	1189.65
10/3/86	Republic Bankcard	Compensation for misc. expenses	524.48

10/29/86	Republic Bankcard	Travel expenses	461.15
12/23/86	Republic Bankcard	Travel Expenses	4041.11
1987-1/31	Republic Bankcard	Travel expense	481.73
2-26	Republic Bankcard	Travel expense	293.55
4-8-87	Republic Bankcard	Travel exp.	265.10

In the cause of action now before the Supreme Court, plaintiff asserts that defendant Mauzy has violated the Campaign Disclosure Act by reporting the disbursement of campaign contributions to himself as purported advances or reimbursements for undisclosed expenditures made to or to be made without giving the name of the true provider of the goods or services in question, and/or without giving the date that the expenditure was incurred, and/or without stating the nature of the goods or services provided.

By his sworn campaign disclosure statements filed with the Secretary of State of Texas, the Honorable Raul A. Gonzalez has engaged in the same or similar acts or omissions reporting as follows:

Date Listed	**Payee**	**Purpose**	**Amount**
12-10-84	Raul A. Gonzalez	Hotel, parking air transportation, cab, in Houston	$206.94

12-14-84	Raul A. Gonzalez	Hotel & taxi Houston for TTLA Board meeting; Air shipping exp.	138.15
1-31-85	Raul A. Gonzalez	Postage; car rentals; cab fares; hotels	293.48
3-6-85	Raul A. Gonzalez	Hotel; meals; auto exp. for trip to Laredo	428.72
3-19-85	Raul A. Gonzalez	Hotel; mileage to Bay City	138.88
4-10-85	Raul A. Gonzalez	Mileage to Hebbronville San Antonio & Ingleside; postage; parking	331.09
6-4-85	Raul A. Gonzalez	Parking; meals hotel in San Angelo	70.00
6-21-84	Raul A. Gonzalez	Hotel & meals in Nacogdoches; Hotel, parking & meals in Houston; hotel & meals in Corpus Christi	590.87
9/20/85	Judge Raul Gonzalez	Reimbursement of Expenses	217.01

10/28/85	Judge Raul Gonzalez	Reim. airport parking/mileage	55.50
11/26/85	Judge Raul Gonzalez	Reimb. per 11-22-85 memo	476.90
12/11/85	Judge Raul Gonzalez	Reimb. per 12/10/85 memo	192.87
12/17/85	Judge Raul Gonzalez	Reimb. per 12/13/85 memo	96.53
3/10/86	Raul Gonzalez	Reimb. for exp.	116.93
04/11/86	Fund Raising		1190.00
03/26/86	Raul A. Gonzalez	Reimb. for Expenses	53.66
04/15/86	Raul A. Gonzalez	Reimbursement for Food-Parking Expenses	88.88
05/13/86	Judge Raul Gonzalez	Out of pocket Expenses	228.40
07/29/86	Raul Gonzalez	Miscellaneous expenses	91.15
09/04/86	Committee to Keep Justice Gonzalez	Allied Bank Acct in Austin Petty Cash	1000.00
09/22/86	Raul A. Gonzalez	Miscellaneous travel expenses	58.27
10/3/86	Raul Gonzalez	Misc. Comp. expenses	143.03
11-19	Raul A. Gonzalez	Reimburse for travel expenses	178.15

In the cause of action now before the Supreme Court, plaintiff asserts that defendant Mauzy has violated the Campaign Disclosure Act by engaging in the questionable practice known as "pocketing" whereby a candi-

date or officeholder diverts political contributions to his own use and benefit and expends the same for personal purposes. Among the defendant's pocketing transactions that have been challenged by plaintiff is the alleged payment by defendant of the expense of moving his household goods and personal effects to Austin around August 1986.

By his sworn campaign disclosure statements filed with the Secretary of State of Texas, the Honorable Raul A. Gonzalez has engaged in the same or similar acts or omissions as defendant, the said Honorable Raul A. Gonzalez reporting as follows:

Date Listed	**Payee**	**Purpose**	**Amount**
2-11-85	Raul A. Gonzalez	3 months apartment rent, Austin, Texas	1350.00
2-11-85	C.C. Transfer Co.	Move from Portland to Austin	2771.08

In this case, the Court is being asked to declare respondent Mauzy's "pet PAC" reporting methods unlawful and those Justices who have conducted all or a substantial part of their campaigns through a "pet PAC" are disqualified or subject to mandatory recusal. The term "pet PAC" is here used in the same sense as explained in paragraph (3)D above. The Hon. Raul Gonzalez, the Hon. Nathan Hecht, the Hon. Robert Gammage, the Hon. Craig Enoch have each conducted campaigns in

substantial part through "pet PACs" and they are subject to disqualification or mandatory recusal on such grounds.

The Court below has held that a candidate need not report political expenditures from personal funds with respect to which the candidate has concurrent personal liabilities. See paragraph (3)C above. The Honorable Chief Justice and the Honorable Justices Gonzalez, Hightower, Hecht, Gammage, Enoch and Spector have each of them incurred personal liability from time to time for campaign expenditures and each of them is disqualified or subject to mandatory recusal on such grounds.

SUPREME COURT OF TEXAS; Charles Ben Howell, Petitioner v. Oscar Mauzy et al., Respondents, No. 94-1293

[PETITIONER'S] VERIFIED EXHIBITS
IN SUPPORT OF MOTION FOR RECUSAL
OR DISQUALIFICATION
[Filed 13 JA 95]

[News Article,] TYLER (TX) MORNING TELEGRAPH; TUESDAY, MARCH 6, 1986, sec. 1, p. 13

AUSTIN (UPI)—Chief Justice John Hill of the Texas Supreme Court bristled Wednesday when an attorney requested that the entire court recuse itself from hearing a case involving Justice Jim Wallace and his opponent, appeals court Judge Charles Ben Howell of Dallas.

Athens attorney Howard Patterson, who represents Howell, said the Democratic-dominated court would give the appearance of bias if it heard the case involving Howell, a Republican.

"We are a legal court, a law court. We do not make our decisions based on politics," Hill said. "We make rulings based on the law. Politics plays no part in our decision making."

Wallace, who did not participate in the hearing, filed a lawsuit alleging that Howell improperly filed for Wallace's Place 3 position on the court without properly withdrawing his application for Place 1.

[Ver. Exhs. 7]

[NEWS RELEASE]

March 12, 1986
Immediate Release

For additional information:
Judge Charles Ben Howell
(214) 823 8400 (214) 749 6924

HOWELL ATTACKS UNFAIR RULING

Republican Judge Charles Ben Howell, now on the Texas Court of Appeals at Dallas, and seeking a seat on the Supreme Court, had harsh words for today's Supreme Court ruling that removed his name from the ballot as a candidate for Place Three. "It sure looks hard for a Republican candidate to get a favorable ruling from an all-Democratic court," Howell said. "First they threw

Buster Brown off the ballot as a candidate for Attorney General and now they have done it to me."

... ...

"How was it possible for me to have a fair trial when everyone on the bench was a political activist for the opposing party? Furthermore, these judges are my opponent's fellow workers, his cronies, his day to day associates. The United States Supreme Court has held again and again that a fair and unbiased tribunal is a cornerstone of due process. I have been denied Due Process of Law."

Howell pointed out that the Texas Constitution provides for the governor to appoint a special court to hear the case where the Supreme Court is disqualified (Article 5, Section 11) and argued that the Supreme Court should have followed such procedure in his case. Last Wednesday, March 5, when Howell's attorney, Howard Pattison of Athens asked the court to disqualify itself, the Court forcefully rejected the suggestion, refused to hear further argument on the point and ordered Pattison to talk about something else. "Sometimes, the truth is too painful for people to hear," Howell said. "If there ever was a case for the use of this constitutional provision, this case, where one of the court's own members is suing his political opponent is the case."

... ...

[Ver. Exhs. 8]

POLITICAL AD. PD. by Judge Hecht for Supreme Court [Mail Solicitation]; April 16, 1986.

Dear Republican Party Leader:

. . . . . .

I know I can defeat the Democratic nominee [Oscar Mauzy] in November.

But first, I must win the Republican nomination. My primary opponent is Charlie Ben Howell of Dallas, widely considered an embarrassment to the judiciary and the Republican Party. He has run for judge nine times and lost seven. He tried to withdraw from this race but was unsuccessful. He has been cited twice for contempt of court and reprimanded by the State Bar for misrepresenting facts in a divorce case. In 1981 he served 13 weekends in jail for contempt of court. He has worn pajamas to court.

. . . . . .

I am confident I will win the Republican nomination. But I need your help. . . .

Getting my message to the voters is expensive, and any financial assistance you can give me now would be greatly appreciated.

Sincerely,
/s/ Nathan L. Hecht, District Judge

[Ver. Exhs. 33-4]

[News Article] DALLAS TIMES HERALD
Friday, April 25, 1986, p. 25A

LETTERS—COURT'S ACTIONS TRANSPARENT

To the Editor:

The Times Herald has reported legislative testimony by Chief Justice John Hill insinuating that someone provided me with an advance leak as to "the timing and result" of the suit brought by his Democratic fellow judge, Jim Wallace, to throw me off the Republican primary ballot as a candidate for Judge Wallace's seat. I can't know what kind of advance information about the case was given to Judge Wallace, who is there every day, but any notion that this Republican judge from 200 miles away in Dallas received inside information from this all-Democratic court is absurd on its face.

As soon as the hearing was concluded on March 5, I did visit with several media representatives, including Patti Kilday from the Times Herald, and made several predictions concerning the case.

I predicted that the decision would be announced exactly one week later on March 12 (a correct but easy prediction.) I predicted that the judges would permit their co-worker and fellow Democrat to win the case. (This prediction took no ouija board.)

I predicted that Judge Kilgarlin would write the court's decision because he is generally viewed as the most politically oriented judge on the court. I further stated that it is a tradition on the U.S. Supreme Court and most state supreme courts for the chief justice, a show of

solidarity, to sign decisions for the court when cases are contentious or controversial. If Kilgarlin did not author the decision, I predicted that Hill would (Hill did).

I predicted that when the opinion was delivered, it would not contain a single word about my No. 1 contention, that the Supreme Court was disqualified to hear this case and that the governor should be asked to appoint a special bipartisan court as provided in the Texas Constitution (100 percent correct).

I also predicted that Judge Gonzalez has a tough election battle on his hands, that he would disassociate himself from this injustice, and that he would write a dissent, just as he did in the throw-Buster-Brown-off-the-ballot case only a few weeks previous (correct again). I stated that Judge Campbell also was facing a tough election and he might join in the dissent, but I further stated that Judge Campbell does not have a reputation of being highly motivated, and my best estimation was that he would not dissent (he didn't).

My analysis is that some members of the media have related my prognostications, freely and openly made, back to Judge Hill and he now suspects that I have a "deep throat" within the court. Ridiculous! These gentlemen just don't realize how transparent their actions are when they insist on presiding in a case where their conduct is subject to question. I suggest that the Texas Supreme Court did not regain any of its lost integrity in the throw-Judge-Charles-Ben-Howell-off-the-ballot case.

CHARLES BEN HOWELL [Ver. Exhs. 9]

[NEWS ARTICLE,] DALLAS TIMES HERALD
Monday, May 5, 1986, p. 8A

Howell Wins Fight Without Switching

Two months ago, Dallas appeals justice Charles Ben Howell unleashed spirited criticism of the Texas Supreme Court for not allowing him to switch his high court candidacy from Place 1 to Place 3.

But Saturday, it was clearly a moot issue.

For Howell, who had tried to switch his candidacy to Place 3 so he could run unopposed, Place 1 did not pose much of a problem after all.

The colorful and sometimes controversial appeals court judge won easily over heavily favored Dallas District Court Judge Nathan Hecht with 60 percent of the vote after a bitter contest.

Howell, who once was accused of wearing pajamas in court, said people who expected Hecht to win, "were reading the tea leaves according to the man who could raise the most money. They didn't prove out in this race. . . . I think that's a good sign."

In November, Howell will face whoever wins the June 7 runoff in the Democratic primary. With the defeat of incumbent Justice Sears McGee, the contest for the Democratic ticket is now between Dallas State Sen. Oscar Mauzy and San Antonio Appeals Court Judge Shirley Butts.

Howell originally filed in Place 1 for a chance to challenge McGee in the general election. Only minutes before the filing deadline, however, he switched to 3.

"I wanted to avoid a primary contest," said Howell, who has run for public office several times since 1961 but won his first political contest in 1980 with a spot on state district court.

"I was running on a shoestring," he said. "I wanted to conserve my resources for the main event."

But the state Supreme Court squashed the move, saying his application for Place 1 was already on file. Howell now attributes his victory to the court's decision.

"I think part of my win was due to the indignation of the Republican voters to the way Texas Supreme Court treated me," Howell said.

He said the ruling was "a political hatchet job. . . . The Democratic party has monopolized the Texas Supreme Court for more than 100 years."

If he wins, Howell doesn't expect his stern criticism of the court to make him ineffective with his brethren.

"One strong voice, even though outnumbered, may create an impetus among the other jurists to straighten up and fly right," he said.

Howell often has been embattled during his 25-year political career.

In 1974, he sued the State Bar of Texas for $2 million after the organization tried to disbar him. Howell said his suit, which charged the bar association with conspiracy, was reason for his recent poor showing in the Dallas Bar Association judicial evaluation poll.

In this election, he filed a $1 million libel lawsuit against opponent Hecht, charging him with spreading "a continuing series of distorted, scurrilous and untrue statements."

Hecht, in letters to Republican leaders, had said Howell has "worn pajamas in court."

Now that he has won the election, Howell said he is not certain he will go ahead with the libel suit. He also admitted he did wear pajamas to court several years ago when he was called to Judge Dee Brown Walker's chambers, but only because he was ill with the flu and "they rousted me out of a sick bed."

[Ver. Exhs. 10]

SWORN STATEMENT OF CONTRIBUTIONS; Filed June 4, 1986. Texas Secretary of State

Name of Political Committee
Judge Hecht for Supreme Court

... ...

Date	Contributor	Money or Equivalent
5/14/[8]6	Hon. Thomas R. Phillips 1817 Sunset Blvd. Houston, TX 77005	[$]100.00

[Ver. Exhs. 35]

NEWS RELEASE

File Date: December 8, 1987 For Additional Information:
11:00 a.m. Judge Charles Ben Howell
Release: Immediate (214) 823-8400

AUSTIN, TX.— Dallas Appeals Court Judge Charles Ben Howell today became the first Republican candidate to formally announce for a seat on the Texas Supreme Court. At 10:00 this morning, he filed papers with the Secretary of State, declaring that he is a candidate for place three on the court, now held by Raul Gonzalez.

"The time for judicial reform is here and now," Howell declared in a press statement made immediately afterwards. "The Texas Supreme Court has become a national disgrace, by reason of Texaco v. Pennzoil and by courtesy of CBS and '60 Minutes.' "

"I don't want to comment about the merits of a case that is still in litigation," he said. "I do declare that the manner in which Texaco was handled by the Supreme Court was a disgrace. First of all, the judges, practically

all of them, have taken gobs of money in contributions from both sides. Political contributions in the $50,000 range from a single law firm are downright obscene.

"Obviously, this case put the judges on the spot. Either way they ruled, they were bound to make some of their big money backers mad. What do they do? They pulled a cop-out. They refused to hold a formal hearing; they refused to allow the lawyers to appear in front of them and argue the case; they refused to prepare a judicial opinion explaining their reasons for deciding the case. Instead, they discussed the case in the backroom and instructed the court clerk to issue a one line announcement that the Supreme Court had refused to become involved on account of supposed 'no reversible error.' Is this the proper type of justice to dispense in the largest, most highly publicized case ever to come before the court?

"Texaco v. Pennzoil involves not only billions of dollars, enough money to pay $1,500.00 to every registered voter in the State of Texas—it involves thousands of Texas jobs, hundreds of thousands of shareholders, in Texas and around the world. Counting all of Texaco's customers, dealers, and suppliers, the Texaco case involves the entire Texas economy.

"What did the Texas Supreme Court have to say when this blockbuster case came to it? Nothing! It sent the parties away empty handed. Apparently, the judges want us to believe that they were too busy. I say, they should never be too busy to concern themselves with justice and the welfare of the entire state.

"The reason the court refused to get involved is obvious. It had political IOU's outstanding to both sides. However, the biggest contributions came from the Jamail-Pennzoil side. The court put political expediency ahead of its duty. The judges copped out in favor of their pocketbooks.

"Too long, Texas has suffered from a one-party judicial system controlled by a handful of lawyers. Texas needs judicial reform. Judicial reform begins at the ballot box. Those who live by the established system will never agree to meaningful reform. I intend to become one of the first Republicans in this century to be elected to the Supreme Court in his own right; I intend to change things on our highest court."

Judge Howell ran for the Supreme Court in 1986. With a $50,000 campaign fund, battling against an opponent with one and one-half million, Howell garnered almost 45% of the vote. "We intend to do a little better in '88," Howell declared.

He was one of the first persons in modern times to campaign for judicial office on the Republican ticket. Elected as a district judge in 1980, he was re-elected in 1982. In 1984, Judge Howell moved up to the Court of Appeals, making him a three time winner—each time with a larger margin of votes. "Victory will be ours in 1988; the people are demanding an end to a one-partisan judiciary and the good old boy system that is irrevocably tied to it." [Ver. Exhs. 13]

[NEWS ARTICLE;] DALLAS TIMES HERALD; Monday, April 11, 1988, p. 1B

JUDICIAL CANDIDATE THREATENED RETALIATION

AUSTIN—Charles Ben Howell . . . threatened retaliation if state GOP officials let another candidate oppose him in the March 8 primary election . . . [according to] a 30 page . . . affidavit in a lawsuit in which he is involved . . . [which] affidavit is part of his effort to have all justices—seven Democrats and two Republicans—disqualify themselves from deciding the lawsuit now on appeal . . . [which] involves the sale of land in Dallas County.

Only minutes before the Jan. 4 filing deadline, Howell met with high-ranking state party officials and warned them that if he had a primary opponent he would switch races and run against the newly appointed chief justice, Thomas Phillips, who was unopposed. . . .

. . . . . .

Rumors began reaching him late last year that state party officials were unhappy . . . that he would oppose incumbent Democrat Raul Gonzalez . . . , Howell said in his affidavit.

"Within a few days, . . . [I heard] that the Hon. Barbara Culver . . . was being pressed to file against me in the Republican primary," Howell said. . . .

"I was told that Justice Culver was merely a so-called 'hatchet man' candidate who would not file . . . at all unless I filed."

Culver confirmed she had been approached about making the race and said she talked with Howell several times. . . . [S]he [finally] opted not to run for Gonzalez's seat . . . [and was subsequently] appointed to a vacancy on the court by Republican Gov. Bill Clements. . . .

. . . . . .

Howell's affidavit goes on to say he decided that if he had to have an opponent in the GOP primary, it would be Phillips. . . . He showed up at the state party offices here . . . two hours before the filing deadline—and told . . . the executive director, what he had decided. . . . An aide to Phillips came to the party offices to join the talks.

. . . . . .

Within only minutes before the deadline, the judge said, he was convinced he would have no opponent if he stayed in the race for Gonzalez's . . . seat. . . . He had no opposition and the two face off in November.

[Ver. Exhs. 16-7]

[NEWS ITEM] TEXAS WEEKLY (Austin, Tx; March 28, 1988

CHIEF DOESN'T WANT TO KILL THAT INDIAN

Don't count on appointed Republican incumbent Chief Justice Tom Phillips to sit around chatting up the entire GOP "reform" slate of Supreme Court candidates. Given a chance or three, Phillips declined to endorse any of his party colleagues—but especially avoiding any suggestion that he would be part of encouraging a vote for

Charles Ben Howell. Phillips even went so far as to say that if, for example, at the state Republican convention in June he and the other Supreme Court candidates were lined up for a joint photograph with their arms around each other, "that would not be an endorsement" of Howell's candidacy.

[Ver. Exhs. 15]

[NEWS ARTICLE] DALLAS TIMES HERALD; Sunday, October 9, 1988, p. 25A

TWO SIDES TO HOWELL CANDIDACY

AUSTIN—Even the Republican nominees for the Texas Supreme Court are critical of one of their associates, Dallas Judge Charles Ben Howell. . . . Nathan Hecht, one of Howell's colleagues on the Fifth District Court of Appeals in Dallas and a GOP candidate for a seat on the Supreme Court, said Howell is "widely considered an embarrassment to the judiciary and to the Republican Party."

Still, Gonzalez is taking his challenger seriously. "Recent polling," campaign aide Mike Cook wrote recently, "suggests that he is a strong candidate because of high name identification from his numerous past political races. . . . "

. . . . . .

[Ver. Exhs. 18]

[NEWS ARTICLE;] McALLEN (TX) AMERICAN; October 19, 1988

JUDICIAL EVENT SPURS DEBATE AMONG CANDIDATES

HOUSTON– . . . [A] rare gathering of 13 Texas Supreme Court candidates last week definitely was an eyeopener. Highlights included . . . one candidate donning a sign proclaiming himself as "Judge Kook" . . . after the Democratic incumbent, . . . Justice Raul Gonzalez, called him "a widely recognized kook" . . . during the taping of a television show. . . . Howell responded with claims that Gonzalez had become part of the integrity problem . . . by accepting large contributions from special interest groups.

. . . . . .

Howell's sign obviously shocked some of his fellow Republican candidates. Chief Justice Thomas Phillips said under Texas law judicial candidates, even those of the same party, run separately. "And this is a good example of why I'm pleased that I'm just running my own race," the Republican chief justice said of Howell's action.

. . . . . .

[Ver. Exhs. 19]

[NEWS ARTICLE;] AUSTIN (TX) AMERICAN-STATESMAN; Friday, October 14, 1988, p. 3B

GONZALEZ HEATS UP SUPREME COURT DEBATE; CALLS RIVAL A 'KOOK'

HOUSTON—Texas Supreme Court Justice Raul Gonzalez branded his Republican opponent, Charles Ben Howell, a "widely recognized kook" in a Thursday night debate. . . .

. . . . . .

[T]he hardest verbal shot came when Gonzalez . . . took dead aim at Howell and said, . . . "[M]y opponent is widely recognized as a kook."

Gonzalez said Howell "has a reputation of showing up in court in pajamas, he served 30 days in jail for contempt of court, he's been reprimanded for [his?] conduct."

. . . Howell [later] took out a small black sign with white lettering and hung it around his neck. It read: "Judge Kook."

He held up another sign that said, "Judge $1,514,710" which he said was for Gonzalez because that was how much money Gonzalez had accepted from special interest groups.

. . . . . .

[Ver. Exhs. 20]

[SCRIPT OF TV SPOT ANNOUNCEMENT; November 1, 1988]

Justice Raul Gonzalez—A bright spot on the Texas Supreme Court.

. . . . . .

His opponent, Charley Ben Howell has also served Texas, doing time in jail for contempt of court.

On November 8th, . . . Vote for Raul Gonzalez. Texas Supreme Court. . . .

[Ver. Exhs. 39]

STATE COMMISSION ON JUDICIAL CONDUCT; Filed November 2, 1988

COMPLAINT FOR REPRIMAND OR REMOVAL OF RAUL GONZALEZ, JUSTICE SUPREME COURT OF TEXAS

Charles Ben Howell complains of Raul Gonzalez, Justice of the Supreme Court of Texas and would show:

. . . . . .

Misconduct Alleged

ONE: *Acceptance of Influential Contributions from Parties Involved in Pending Litigation.* [Two paragraph allegation]

TWO: *Failure to Make Reasonable Disclosure to the Parties.* [Two paragraph allegation]

THREE: *Making and Failing to Retract an Unsupportable Statement as to His Qualifications.* [Six paragraph allegation]

FOUR: *Failure to Discuss His Contributions with Accuracy, Candor and Fairness.* [Six paragraph allegation]

FIVE: *Failing to Discuss His Opponent's Qualifications with Accuracy, Candor and Fairness.* [Three paragraph allegation]

. . . . . .

[Ver. Exhs 25-8]

[News Article;] CORPUS CHRISTI (TX) CALLER-TIMES, November 9, 1988

GONZALEZ LEADS IN RACE FOR HIGH COURT

Incumbent Democratic Justice Raul A. Gonzalez led . . . in early returns yesterday for the Place 5 seat on the Texas Supreme Court.

. . . . . .

"Given the opposition, I would've expected have have done better," Gonzalez said. . . .

. . . . . .

[Ver. Exhs. 21]

[NEWS ARTICLE;] DALLAS MORNING NEWS; Thursday, December 22, 1988, p. 24A

By Jack Keever, Associated Press

AUSTIN—Dallas appeals court Judge Charles Ben Howell on Wednesday claimed one victory and one loss before the State Commission on Judicial Conduct.

Howell released a copy of a confidential letter from the commission, which advised him that his news release of Dec. 8, 1987 [PA 49], "did not rise to the level of misconduct."

The release sent to reporters . . . criticized the high court's handling of the Texaco-Pennzoil lawsuit.

. . . . . .

A copy of another confidential letter . . . said the commission . . . was dismissing Howell's complaint [against Justice Gonzalez] "as being without merit."

. . . . . .

"Whitewash," Howell said. . . . "At an Austin news conference on Nov. 4, I predicted that this 8-3 Democratic outfit would do nothing until after the election when they would apply a whitewash job," he said. "Now they have done exactly as I said they would do."

Howell said one of his charges accused Gonzalez of accepting $27,500 from the Texas Medical Association political action committee, then voting in favor of the association on a medical malpractice damages case.

. . . . . .

Responding to Howell's remarks, Gonzalez said,

"It's unfortunate that we have people like Charles Ben Howell who don't know when to quit."

"I don't think it merits any further comment," he said.

[Ver. Exhs 37]

[GAMMAGE FOR SUPREME COURT; SCRIPT OF VIDEOTAPE TV COMMERCIAL; October 23-November 5, 1990]

[Narration by off-screen solo male announcer.]

[Open with grainy black and white still photo of Charles Ben Howell, apparently clipped from a newspaper. Sign around neck "Judge Kook" is visible. Same photo recurs throughout, moving closer and cropping sign in later phases.] At opening, name "Charles Ben Howell" appears across top of screen.]

Meet Charley Ben Howell, Republican candidate for the Texas Supreme Court. He once actually wore that Judge Kook sign on TV.

[Photo shifts to right side of screen. Animated drawing of pajamas moves across left side. Message appears on bottom of screen, "Wore pajamas to court."]

He also once wore his pajamas to court.

[Copy of legal pleading appears on left side of screen, virtually unreadable.]

He was ordered to pay $100,000 for filing bad faith lawsuits.

[Pleading captioned "Before the State Commission on Judicial Conduct" appears on screen.]

He was reprimanded by the State Judicial Conduct Commission for violating ethical standards..

[Photo re-appears, Simulated bars of jailhouse door swing across face.]

And he once served time in jail for contempt of court [sound of jail door slamming.]

[Message appears on bottom of screen "Contempt of Court."]

[?The?] GOP would like to forget him.

[Photo moves to upper right. Message appears across screen "Keep Charles Ben Howell off our Supreme Court."]

So should we all.

Let's keep Charles Ben Howell off our Supreme Court.

[Ver. Exhs. 47]

[PRESS] RELEASE; [Judge Howell Campaign]; November 1, 1990; Release: Immediate

JUDGE HOWELL ATTACKS "SALARY" TO OPPONENT'S WIFE

Judge Charles Ben Howell, Republican candidate for Supreme Court has challenged his opponent, Bob Gammage for "siphoning off to personal use" over $34,000 of political contributions through the mechanism of reporting that he is paying an alleged salary of $4,000 per month to his wife, using her maiden name.

Under Texas law, every candidate must file sworn statements detailing campaign contributions and expenditures. It is illegal for a candidate to divert political contributions to personal use. However, utilizing her former name of Lynda Hallmark, Mr. Gammage has used campaign funds to pay his wife a total since January of approximately $34,000. Assuming that he is paying taxes and withholding on these sums, her gross pay up to date would approach $40,000. During the last several months, he has made payments exacting $4,000 each month directly to her for services assertedly rendered to the Gammage campaign.

"In my opinion, these payments violate the Texas Election Code. They also violate the Code of Judicial Conduct. . . . ["]

"I assume that my opponent will claim that Mrs. Gammage has earned this money. Why, then, I ask has he paid it to her in her maiden name? Why has he filed

handwritten reports written in an almost undecipherable scrawl? Every major campaign that I have ever heard of types its reports. This man obviously is trying to hide the true facts regarding his campaign expenditures.["]

Let's assume for a moment that she has worked long and hard for his campaign. What difference? The public expects that anyone who goes out and asks strangers for money to support his campaign will insist that his own family also donate their time and efforts. This is a community property state. I think these payments are out and out illegal. At the very least, they represent cheap and tawdry campaign tactics. By his furtive method of reporting, he admits as much.["]

"I have been told that the present Mrs. Gammage worked in his law office as his secretary before they were married. If this information is correct, I will bet the farm that he never paid her out of his pocket at a rate anywhere near approaching $48,000 per year. I am proud to say that my wife, my children and all of my relatives have worked long and hard on my campaigns for many years without thought of monetary compensation.["]

[Ver. Exhs. 41]

[NEWS ITEM;] AVALANCHE JOURNAL, Lubbock, Texas; November 1, 1990

HOWELL SAYS FOE MISUSED FUNDS

Place 2 Texas Supreme Court candidate Judge

Charles Ben Howell courting votes in Lubbock on Wednesday, accused his Democratic opponent, Judge Bob Gammage of siphoning campaign funds for private use.

Howell, a Republican appellate judge from Dallas, said Gammage's campaign spending records—handwritten in "a terrible scrawl"—indicate that Gammage paid about $4,000 a month to his wife, Lynda, under her maiden name, Lynda Hallmark.

Howell called the payments to Mrs. Gammage "a sleazy, cheap and tawdry use of political contributions."

Gammage, who sits on the Texas Court of Appeals, termed Howell's allegations "last minute desperation on his part by trying to create some phony issue."

. . . . . .

Howell, a somewhat offbeat candidate who took his campaign on a month long bicycle trip across Texas this summer, has been ridiculed in Gammage's political ads. One ad shows a photograph of Howell with a sign around his neck that reads "Judge Kook."

The Gammage campaign has taken events that occurred 20 years ago and "is trying to paint me as some kind of freak," Howell said. "I think those tactics will backfire."

Howell . . . [said the court], has been beset by decisions handed down by ultra-liberals like Oscar Mauzy and Lloyd Doggett. Gammage, he said, is cut from the same mold.

"I don't know what he's basing that on. We're all equally offended." . . . Gammage said.

[Ver. Exhs. 45]

[ENOCH FOR SUPREME COURT, Script of Videotape TV Commercial; Feb. 27, 1992]

Opening Scene

Judge Enoch seated and robed in front of law library.

Caption: "Judge Craig Enoch."

. . . . . .

Black and white headshot of Judge Howell.

Caption: "Official reprimand for misconduct and bad faith; Charles Ben Howell."

Narrator:

"His opponent Charles Ben Howell, reprimanded for misconduct; rebuked for wearing pajamas in the courtroom, jailed for contempt."

. . . . . .

[Ver. Exhs. 48]

DISTRICT COURT, TRAVIS COUNTY, 147TH DIST.; Charles Ben Howell v Craig Trively Enoch et al.; No. 92-15,040; October 27, 1992.

PLAINTIFF'S ORIGINAL PETITION

(1) Plaintiff was a candidate for nomination to the office of Justice of the Supreme Court, Place 1 at the Republican Primary of March 10, 1992.

... ...

(3) Oscar Mauzy is the current holder of the said office and is also the nominee of the Democratic Party for re-election thereto.

(4) Defendants (3) thru (10) are physicians and other closely aligned members of the medical community together with their political action groups, which became legally required when they became politically active, and together with the legally required officials of said political action groups. Said defendants have as a common objective the election of judges whom they believe will assist them in cutting the amount of damages awarded to former patients for medical malpractice injury.

FIRST VIOLATION—HIDING SUPPORTERS AND CAMPAIGN MONEY

... ...

. . . [D]efendant Enoch . . . determined to launch a "Mr. Clean" campaign. . . . [Pursuant thereto, he] publicly announced and promoted the claim that he would refuse to accept more than $5,000 from any single individual or group.

Had defendant Enoch directly accepted the $100,000 [promised by co-defendants] and had the same been reported . . . as required by law, his "integrity" claims would have immediately been exposed and denounced. . . . After extended consultation and communication, defendants (1) thru (10) undertook to funnel the $100,000 into defendant Enoch's campaign through an independent action charade whereby all defendant groups raised and spent said $100,000 or more on defendant Enoch's campaign while pretending they had no knowledge or connection with the others.

. . . . . .

[Defendant Enoch has] omitted to report campaign receipts . . . of not less than $100,000 by failing to incorporate into . . . [his] own reports those reports required of defendants (3) thru (10). By law, . . . [he] thereby became liable in damages for double the said unreported receipts or $200,000.

SECOND VIOLATION—DIVERTING STATE SERVICES AND FACILITIES TO CAMPAIGN USE

At all material times, defendant Enoch was employed by the State of Texas as Chief Justice of the Court of Appeals for the Fifth District. . . .

During the primary campaign, [against plaintiff Howell] . . . Enoch diverted the facilities of his office and the personnel under his supervision to his personal use and to the use of his campaign. Said employees helped him prepare speeches and other written material used in his campaign. In addition, they handled by his own admission, the drafting, preparation and mailing of five hun-

dred or more pieces of campaign correspondence.

Said employees performed said services during hours when their labor was paid for by the State of Texas. They utilized equipment, supplies and facilities paid for with tax funds. The tax paid facilities of the State of Texas and the County of Dallas were thereby applied to the Enoch campaign.

Under the Election Code, any transfer of money, property or services to the use of a candidate constitutes a political contribution. The cost of the services and supplies and the fair value of the use of the facilities and equipment constitutes a contribution, as defined, to the Enoch campaign.

On or about October 15, 1992, defendant Enoch acknowledged the receipt of the aforesaid contribution and its expenditure in support of his campaign. He proceeded to refund to the State of Texas the sum of approximately $500.00.

All political contributions, as defined, and all political expenditures must be promptly reported to the Texas Ethics Commission. For more than six months, [defendant Enoch] . . . failed to report the contribution of the services, supplies, premises and equipment of the State of Texas and County of Dallas to the Enoch campaign. Under the law, such failure to report made [defendant Enoch] liable to plaintiff for double the amount contributed plus double the amount expended.

The valuation by defendant Enoch of the amount

received by him . . . has been grossly understated. . . . The fair value of the items received by the campaign total $12,000 or more and the double damages provided by law equal $24,000.

WHEREFORE, premises considered, plaintiff asks judgment for his damages as pleaded herein.

[Ver. Exhs. 49-57]

NEWS ITEM; Texas Lawyer; July 4, 1994; p. 1; Microfilm Records, Dallas County (TX) Law Library.

AG CONFIRMS PAYING COURT WHISTLEBLOWER

Kathleen Spears, the former 5th Court of Appeals secretary whose allegations of unethical conduct tormented the court and Supreme Court Justice Craig Enoch for almost two years has gone away—apparently satisfied by a $25,000 payout from the state treasury.

The final disposition of two civil suits by Spears stemming from her claims of doing political work for Enoch while on state time—following a grand jury's no-bill of Enoch on ethics complaints—spares the 5th Court any further probing of possible misuse of state time.

. . . . . .

A month before the November 1992 election in which Enoch won his seat on the Supreme Court, Spears, then a 5th Court secretary went public with allegations that she had done extensive political work for Enoch on state time.

During the campaign, Enoch had admitted using a briefing attorney to research a master's thesis, a practice he defended as legal. After Spears alleged she also had done personal and political work for him on state time, Enoch reimbursed the state $568.30 to cover the time Spears spent writing thank-you letters to supporters.

Spears contended that Enoch's reimbursement fell far short of repaying the state for the work she says she did for him.

[Ver. Exhs. 58-59]

[TEXAS] STATE COMMISSION ON JUDICIAL CONDUCT; Filed March ___, 1994.

COMPLAINT

Charles Ben Howell complains of Nathan Lincoln Hecht, Justice of the Supreme Court of Texas and would show:

STANDARDS

. . . . . .

3. Canon 5 of the Code of Judicial Conduct provides in part as follows: "A judge or judicial candidate . . . shall not: . . . (ii) knowingly misrepresent the identity, qualifications, present position or any other fact concerning the . . . opponent."

. . . . . .

MISCONDUCT ALLEGED

During August 1993, complainant gave an exclusive interview to a reporter for WFAA-TV, Channel 8,

Dallas, Texas. During the interview, the reporter questioned complainant regarding the fact that he has probably conducted more contested political campaigns than any other Texas Republican officeholder. The discussion proceeded to epithets that one or more of complainant's many opponents had attempted to attach to complainant. As accurately as complainant can reconstruct from memory, the following exchange then transpired:

"[Reporter:] Judge Howell, has any of your opponents ever contended that you are mentally unbalanced?

"[Complainant:] (laughter) . . . Crazy Charley!! No, I don't know of anyone who has ever went that far. Certainly, the voters have not been impressed by any such rubbish. I have won five different election contests and have almost always made a very strong showing."

. . . . . .

Respondent, Nathan Lincoln Hecht . . . has utilized a pirate video tape of the foregoing interview for his own gain by inserting in his political advertising, running in a number of statewide television markets, the above underscored portion of said interview. Specifically, the pirated clip depicts complainant as laughing and exclaiming "Crazy Charley!!"

As this complainant has been reliably informed, the owners and managers of WFAA-TV have a strict policy not to allow news tapes to be re-used for any advertising purpose whatever. Respondent did not receive permission to use the news tape in the manner mentioned and made no effort to secure permission. Complainant alleges that a request for permission was omitted by re-

spondent because respondent knew full well that permission would be refused.

. . . . . .

. . . [T]he above mentioned extract has been taken entirely out of context for the intent and purpose of demeaning this complainant, to portray him as an idiot and a buffoon. This all constitutes more than a thinly veiled name-calling exercise of an extremely juvenile nature.

This out-of-context use of the Channel 8 videotape represents the lowest level of political campaign activity to be found anywhere in American politics, i.e., attacking the opponent with insulting epithets. The same is a violation of Canons 1 and 5(ii) as quoted above.

The violations herein are of particularly serious gravity because the rules that have been violated are rules adopted by the Supreme Court itself. Therefore, judges of lower courts plus the public in general are presented with the spectacle of a member of the rule-making body refusing to follow rules which they, themselves have adopted.

. . . . . .

CONCLUSION

Wherefore, complainant asks that the respondent, Nathan Lincoln Hecht be cited for the judicial misconduct pleaded. . . .

[Ver. Exhs. 60-4]

[NEWS RELEASE], Justice Nathan Hecht [Campaign Office]; March 7, 1994; "For immediate Release."

HECHT CAMPAIGN RESPONDS TO CHARLES BEN HOWELL ALLEGATIONS

Austin—Responding to charges raised today by perennial candidate Charles Ben Howell, Justice Nathan Hecht's campaign manager, Beth Ramp, said "This is a typical last minute stunt that Texans have come to expect from Howell," said Ramp. "Howell's attack on the eve of the primary is either grandstanding or shows his ignorance of the law—maybe both."

. . . . . .

Ramp continued, "I understand why Mr. Howell would protest so loud when we draw attention to this television interview. It shows his true colors and he does not want the voters to finally understand that he is unfit to be on the Supreme Court.

. . . . . .

[Ver. Exhs. 65]

[PROCEEDINGS IN RELATED CASE; TEXAS SUPREME COURT;T, HOUSTON LIGHTING v. REYNOLDS; No. C-5499]

Chief Justice's Certificate of Disqualification
Dated May 3, 1988

The Honorable William P. Clements, Jr.
Governor of Texas . . .

I certify that I am disqualified by the mandatory requirements of Rule 15a(1)(a), Texas Rules of Appellate Procedure, from participating in the determination of

cause number C-5499, *Houston Lighting & Power Co. v. Carol Ann Hauser Reynolds, etc.*, now pending before this Court.

Pursuant to Texas Constitution, article V, § 11 and Texas Government Code § 22.005, you are requested to immediately commission a person possessed of the qualifications prescribed for Justices of the Supreme Court to hear and determine this case.

[Ver. Exhs. 3]

Governor's Appointment of Special Chief Justice
[Filed June 27, 1988]

The Honorable Jack M. Rains
Secretary of State . . .

Please be advised that pursuant to Article V, Section 11 of the Constitution of the State of Texas and Section 22.005 of the Texas Government Code I am today appointing the following individual to serve as Chief Justice of the Supreme Court of Texas in the matter of Houston Lighting & Power Co. v. Carol Ann Hauser Reynolds, etc., Cause No. C-5499, currently pending before that court:

THOMAS W. LUCE III
2800 Momentum Place
1717 Main Street
Dallas, Texas 75201

Mr. Luce will serve in the place of Chief Justice Thomas R. Phillips who has certified his disqualification

to hear the above matter to me. Please issue a commission to this appointee as soon as he has qualified.

[Ver. Exhs. 4]

[NEWS ARTICLE;] DALLAS TIMES HERALD; Saturday, June 4, 1988; p. 1B [Filed, Microfilm Records, Dallas (TX) Central Public Library]

CHIEF JUSTICE DISQUALIFIES SELF FROM CASE

By Fred Bonavita
Times Herald Austin Bureau

AUSTIN—Chief Justice Thomas R. Phillips has disqualified himself from a Supreme Court case in which his former law firm is involved and has asked Gov. Bill Clements to appoint a special temporary justice to take his place.

Phillips declined Friday to elaborate on the rare request. But court observers said the action means the state's highest appeals court is deadlocked 4-4 on the appeal of a $3.7 million judgment against Houston Lighting & Power Co.

The Texas Constitution requires a majority of the court—in this case five of the nine members—to decide a case. A court official said the most recent call for appointment of a temporary justice to break a tie was made in the mid-1920's.

James Huffines, Clements' appointments secretary, said the special justice would be named within 10 days.

In a letter sent to Clements last month, Phillips said he disqualified himself from deciding the case because his former Houston law firm, Baker & Botts, represents HL&P.

"Under the rules, I had to get out," Phillips said Friday. . . .

Phillips, a former state district judge in Houston before being appointed chief justice by Clements this year, said rules of judicial procedure that became effective Jan. 1 require him to recuse himself in cases such as this.

Although he did not participate in the defense of HL&P, he was a member of the law firm when the suit was filed, and lawyers with whom he practiced represented the company in court, Phillips said.

[Ver. Exhs. 5]

THE SUPREME COURT OF TEXAS; Charles Ben Howell v Oscar Mauzy, et al.; No. 94-1293; March 21, 1995

[PETITIONER'S] SECOND SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF [PETITIONER'S] MOTION FOR DISQUALIFICATION OR RECUSAL OF CERTAIN JUSTICES

Summary of Additional Facts Requiring Disqualification or Recusal

As shown in greater detail below, and in docu-

ments herein incorporated by reference, the honorable justices Hightower and Spector, each of them having already addressed, and each of them here being further addressed, is disqualified or subject to mandatory recusation for the following additional reasons:

In the summary of facts at the outset of plaintiff's first supplemental affidavit, plaintiff presented his section (3) entitled "Similar Unlawful Actions" which is here incorporated by reference. Special reference is made to subsection A concerning unlawful reporting of campaign expenditures channeled to the true provider through credit card companies and other intermediaries. Inasmuch as plaintiff urges to the Supreme Court as a part of this case that such method of reporting is unlawful, any justice who has followed or who might follow any such method of reporting in the future has been and is now challenged as being subject to mandatory recusal or disqualification. Plaintiff further incorporates herein paragraphs 15 through 19 of the first supplemental affidavit stating that one or more justices being addressed have themselves filed CDA reports in the manner employed by defendant Mauzy and which method of reporting is not lawful. To rule in favor of plaintiff would amount to an inferential admission that the justices being addressed have not acted in a lawful manner. Any justice so situated would be insulating himself from liability and embarrassment and would be acting in his own case.

The Honorable Jack Hightower has engaged in the same alleged acts or commissions as defendant by filing campaign disclosure reports with the designated authority listing credit card transactions which fail to give the name and address of the ultimate provider, the date and the amount of the transaction with each such provider and the purpose of each such underlying transaction in the

following instances:

Date Listed	Payee	Purpose	Amount
2/13/92	American Express	Travel Expense	1,147.42
02/26/92	MBNA America	Airline Payment	58.00
03/02/92	First USA Mastercard	Travel Reimbursement	1,463.40
03/30/92	MBNA America	Airline Ticket	110.00
03/30/92	First USA Mastercard	Air Travel & Car Rentals	2,801.64
04/03/92	American Express	Convention in Houston—Hotel	974.28
05/20/92	First USA Mastercard	Travel Expenses	887.66
05/20/93	First USA Mastercard	Office Supplies	691.13
05/29/92	First U.S.A. Bank	Travel Expenses 4/10-6/30	2,652.62
05/29/92	First U.S.A. Bank	Computer Purchase	521.39
07/14/92	American Express	Travel Expense	69.58
08/31/92	First U.S.A. Bank Mastercard	Travel 7/13/92-8/18/92	566.04
09/28/92	First USA Mastercard	Travel Expense 8/19-9/17/92	1,409.54
10/06/92	Mastercard	Campaign Office Supplies	189.33
10/27/92	First USA Mastercard	Travel Expenses 9/22-10/17	412.50

11/24/92	First USA Mastercard	Travel Expenses	841.10
3/4	Citibank VISA	Airline, Rental Car	131.44
3/15	Citibank VISA	Airline, Rental Car	95.99

In the cause of action now before the Supreme Court, plaintiff asserts that defendant Mauzy has violated the Campaign Disclosure Act by reporting the disbursement of campaign contributions to himself as purported advances or reimbursements for undisclosed expenditures made or to be made without giving the name of the true provider of the goods or services in question, and/or without giving the date that the expenditure was incurred, and/or without stating the nature of the goods or services provided.

The Honorable Jack Hightower has engaged in the same alleged acts or omissions as defendant by filing campaign disclosure reports with the designated authority listing the distribution of campaign contributions to himself which fail to give the name and address of the ultimate provider, the date and the amount of the transaction with each such provider and the purpose of each underlying transaction, in the following instances:

Date Listed	**Payee**	**Purpose**	**Amount**
02/26/92	Jack Hightower	Reimb. Travel Parking Exp.	153.55
03/09/92	Jack Hightower	Travel Reimbursement	340.23
08/05/92	Jack Hightower	Reimb. Travel Expenses	368.92

10/09/92	Jack Hightower	Reimb. Travel Expenses	128.96

The Honorable Rose Spector has further filed CDA reports which reflect that she has failed to comply with the statute in the same manner or mode as the defendant has been charged in that Justice Spector has filed sworn reports of campaign expenditures which fail to give the name and address of the ultimate provider, the date and the amount of each transaction with each such provider and the purpose of each such underlying transaction in the following instances:

Date Listed	**Payee**	**Purpose**	**Amount**
06/25/92	The LJS Company	Expenses	326.73
08/01/92	The LJS Company	Reimbursement	316.75
08/18/92	The LJS Company	Reimbursement	312.32
09/26/92	Tess Giolima	Reimbursement	48.98
10/02/92	The LJS Company	Reimbursement	173.27
10/04/92	Tess Giolima	Reimbursement	114.20
10/31/92	The LJS Company	Reimbursement	324.26

Although the infractions of Justice Spector do not involve credit card charges or the disbursement of lump sums to the candidate or to "cash" or to "travel" or to "entertainment" or to some other inanimate name or non-entity, they do involve disbursements to employees or to persons continuously furnishing labor and personal services to Justice Spector's campaign and being intimately involved therewith throughout, all without furnishing the name and address of the ultimate provider, the date and the amount of the transaction with each such provider and the purpose of each such underlying transaction. Obviously, if the candidate cannot disburse in this manner into his own name or into the name of "cash" or such, he cannot disburse to an employee or someone in position

comparable to an employee omitting all explanation other than "expenses" or "reimbursement."

To hold otherwise would constitute drawing a roadmap for fraud. If it is permissible to disburse funds to an employee or intimate campaign associate without the legally required information concerning the true provider, then, as an extreme example, a candidate could disburse his entire campaign fund to a campaign associate (perhaps his wife—see amended affidavit, par. 6-7) giving no further explanation than "advance," "expenses," "reimbursement," and the like. The reporting requirements would be reduced to a farce. Even without going to this extreme, if the candidate is not required to detail disbursements to his workers and associates, he is granted carte blanche to siphon all the funds that he desires off to illicit, unlawful, and potentially embarrassing purposes, and hide various activities that he would prefer not to see the light of day.

Restating the matter in a slightly different form, plaintiff urges that it is not necessary to prove, as a predicate to a challenge to Justice Spector, that her reports were clearly unlawful. It is sufficient to show that the lawfulness of Justice Spector's reports could very well turn upon the unlawfulness of the reports of defendant Oscar Mauzy, as urged by this plaintiff. The parallel between the Mauzy reports and Justice Spector's reports is obvious. It follows that Justice Spector, as well as Justice Hightower, and the other Justices being addressed are all subject to disqualification or mandatory recusation in this case.

True copies abstracted from the official CDA reports filed by Justices Hightower and Spector are attached hereto. The originals, sworn to by each said justice, respectively, are on file with the Texas Ethics Com-

mission. This affiant has carefully compared the attached copies to the originals and the said copies are true and correct. Affiant first discovered the existence thereof on March 8, 1995 at which time he personally examined the said originals in the office of the Texas Ethics Commission. He thereafter exercised diligence in obtaining copies thereof and in preparing and filing this affidavit.

[NEWS ARTICLE;] Dallas Morning News; Saturday, July 22, 1995, p. 12F [Filed Microfilm Records, Dallas (TX) Central Public Library]

THREE STATE OFFICIALS SAY THEY'LL CORRECT CAMPAIGN REPORTS

[In their latest campaign reports, three] statewide officeholders . . . including Attorney General Dan Morales, listed payments to credit card companies as part of their political expenditures. State law requires that candidates and elected officials identify who was actually paid.

. . . . . .

Also listing credit card payments in their campaign reports on Monday were Comptroller John Sharp and Supreme Court Justice Raul Gonzalez. Both said they will file more details.

State law requires that political candidates and elected officials periodically file reports identifying how their campaigns raise and spend money.

The Texas Ethics Commission has ruled that candidates must identify the recipient of campaign expenditures, not simply list lump-sum payments to a credit card company.

"The law says you have to name the payee, and it has always been our advice that the payee is not VISA," said Sarah Woelk, acting director of the Texas Ethics Commission. "The payee is the ultimate recipient of the money."

The Dallas Morning News routinely reviews campaign finance reports of all statewide officeholders filed with the ethics commission. The News found that Mr. Morales, Mr. Sharp and Mr. Gonzalez, all Democrats, listed payments to credit card companies on their reports, which cover the first six months of the year.

. . . . . .

"We've made a good faith effort to comply," said Mr. Gonzalez. "If we're not in compliance, we're not in compliance—and we'll try to reply."

. . . . . .

. . . Mr. Gonzalez reported $46,828 in expenditures, $1,739 to credit cards.

. . . . . .

In 1988, the practice of some elected officials to list payments to credit card companies prompted then Secretary of State Jack Rains to issue an opinion saying the law requires more detailed disclosure of expenses.

. . . . . .

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AUG 16 1995

(3)

No. 95-178

IN THE
Supreme Court of the United States
October Term, 1995

CHARLES BEN HOWELL, *Petitioner*
v
OSCAR MAUZY, ET AL., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF TEXAS

PETITIONER'S MOTION THAT THE CASE BE REFERRED BACK TO THE TEXAS SUPREME COURT FOR THE PREPARATION OF A DEFINITIVE OPINION

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RELIEF REQUESTED BY MOTION

By his petition for a writ of certiorari, petitioner presents that seven of the nine justices of the Texas Supreme Court were disqualified to consider the case which petitioner presented to that Court (ptn. 7-13). The Texas Supreme Court overruled[1] petitioner's motion for disqualification *without opinion* (PA 1, 39). By this motion, petitioner presents that the Supreme Court of the United States will encounter substantial difficulty in passing upon the errors asserted by the petition without any insight into the reasoning of the Court below. Petitioner therefore moves that the case be returned to the Supreme Court of Texas, before considering the petition for certiorari upon its merits, with a direction that the Texas Supreme Court prepare an opinion specifically addressing the federal questions raised by the petition.

GROUNDS FOR MOTION

The case at hand is unique from many aspects. During six of the nine years that this case has been pending, the defendant-respondent was, himself, a member of the Texas Supreme Court. *TX Almanac*, (88 ed.) pp. 304,43. Lengthy perusal of the digests nationally convinces petitioner that suits against appellate jurists in their own courts, present or recent past, are highly unusual. Petitioner, plaintiff below, challenged seven of the Texas Supreme Court justices as disqualified (PA 43-7,

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[1] All references prefixed "(PA)" are to "Petitioner's Appendix," volumes 1 & 2, annexed to the petition for certiorari.

47-65, 65-85, 85-121, 121-7), urging varying grounds with respect to each. We find no reported case presenting a comparable factual situation—in fact, claims of disqualification against appellate jurists are quite rare. Of primary importance to the Supreme Court is that the Court below disposed of petitioner's extensive disqualification claims with NO OPINION (PA 1, 39). Few cases indeed come before the United States Supreme Court with *no opinion* from the court below.

Obviously, this Court's task of evaluating the claims presented by your petitioner have been increased in the absence of an opinion below. Furthermore, respondent filed no papers opposing disqualification; the record does not even reflect the position of the opposing party. The seriousness of the claims, and the fact that the case has close ties to the membership of the Texas Court itself, well justified an opinion explaining the grounds upon which the Texas Supreme Court has held that not even one of the seven justices under challenge was disqualified (PA 39). Compare *Tyson v. IN*, 622 NE2d 457 (IN 93) (Chief justice of upper tier appellate court felt constrained to write opinion explaining his decision to step down when he left the court evenly divided by doing so). By returning the case to the Texas Supreme Court, the Supreme Court of the United States will be doing no more than directing the Court below to do that which it should have done in the first instance.

Petitioner asks that this Court substantially follow the procedure that it employed in *Capital Cities v. Toole*, 466 US 378 (84) (Per Curiam) (Syllabus: "[C]ause is remanded for clarification of the record, which does not

disclose whether the Pennsylvania Supreme Court passed on petitioners' federal constitutional claims. . . . "), where no opinion had been written by the lower court.[2] Although *Capital Cities* was remanded for a determination whether the state court disposed of the case upon state or federal grounds, there is no reason to hold that such is the exclusive grounds for referring a case back to the state court for an opinion. The controlling statute, 28 U.S.C. §2106, contains no such restrictions.

The only deciding factor in referring cases back to the Court below for the preparation of an opinion should be whether the Supreme Court of the United States will be hampered in its work by the absence of an opinion. Considering that seven justices were under challenge upon multiple and varying grounds, petitioner submits that, in the case at bar, this Court will, in fact be seriously hampered by the failure of the Texas Supreme Court to

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[2]There is no suggestion in the record below that the Texas Supreme Court failed to pass upon this petitioner's federal constitutional claims. Respondent has made no such contention; in fact, respondent chose to ignore the motion to disqualify. The motion was filed as the first order of business several weeks before the case was disposed on its merits (PA 43, 39). The order disposing of the motion to disqualify contains the words "as supplemented" bespeaking a disposition of the entirety thereof upon its merits. While it is true that the motion contained both state and federal grounds (PA 43, 4-5), the blanket overruler amounted to a ruling upon all grounds stated therein. In addition, petitioner filed along with the motion, his "Brief in Support of Motion for Recusal or Disqualification" (TXSM, dkt. item 5, filed 04JA95) presenting and discussing federal constitutional authority in support of his federal grounds (*Id.* pp. 9, 10-3). It follows that the federal claims were necessarily reached and decided against this petitioner.

indicate the reasoning which it employed in reaching its decision to overrule petitioner's motion for the disqualification of seven of its nine justices. It follows that this is an appropriate case in which the United States Supreme Court should call for the preparation of an opinion by the Court below.

In line with *Capital Cities*, petitioner further presents that the Court below should not be called upon to simply explain its rulings. In connection with the preparation of its opinion, the Texas Supreme Court should be free to revise its actions to any extent that it may conclude is proper. Thus, the United States Supreme Court, without considering the merits of the decision below should, per *Capital Cities*, "vacate the judgment of the Supreme Court of . . . [Texas], and remand the cause to that court for such further proceedings as it may deem appropriate to clarify [its reasoning] . . . " in again disposing of the case.

PRAYER

Wherefore, petitioner moves that this motion be granted and that the Supreme Court of the United States, before reaching the merits, direct the Texas Supreme Court to prepare an opinion setting forth its reasoning in connection with the overruler of petitioner's motion for disqualification of seven justices of the Texas Supreme Court.

Respectfully submitted,

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